1985

SUPREME COURT OF THE UNITED STATES.

No. 72.

JOHN CHARLES FREMONT, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT, UNITED STATES, FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered, that on this Wednesday, the twenty-first day of January, Anno Domini one thousand eight hundred and fifty-two, before the Commissioners to ascertain and settle the private land claims in the State of California, sitting as a Board in the City of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:—

The Petition of John C. Fremont for a tract of land called "Las Mariposas" was presented, and ordered to be filed and docketed No. 1, and is as follows, to wit:—

JOHN C. FREMONT, Claimant,
vs.
THE UNITED STATES, Defendant. } No. 1.

To the Honorable the Commissioners of the United States to ascertain and settle the Private Land Claims in the State of California:

Your petitioner, John Charles Fremont, a citizen of the United States, respectfully claims and asks that he may have confirmed therein a tract of land in the State of California and County of Mariposas, supposed to contain ten Spanish leagues in extent, situated on the east of the river San Joaquin, and being a tract of country called "Las Mariposas," a valley watered by a stream then and still known under the name of Las Mariposas, forming the line of road for the troops employed in that region against the Indians, in their journeys to the Snowy Mountains from the San Joaquin, between which this tract lays, affording many convenient camps, with grass, wood and water, the same being represented, as well as may be, in the accompanying map, drawn according to the original decree, vesting said land in Juan Bautista Alvarado, and also as described in an after paper or title, and of which said tract of land your petitioner and claimant says the title was derived from the Mexican Government, and of which he is at present the legal owner.

Your Petitioner represents, that on the 29th day of February, 1844, the said land was, by a decree, made by Governor Manuel Micheltorrena, declared to be the property of Juan B. Alvarado, a copy of which decree, marked Exhibit "A," is hereunto annexed, and will, on final hearing, be proven as may be required. Your petitioner further states, that said decree being founded on valuable consideration, said Micheltorrena, further to manifest the justice of the Mexican nation more fully to secure the said Juan B. Alvarado in his said claim, issued a further and additional muniment of title on the said 29th day of February, 1844, a copy whereof is hereunto

attached, marked Exhibit "B," the original of which shall be produced and proven as shall be required. At the time this grant was made, the country in which it lies was a remote frontier, occupied exclusively by hostile Indians, and considered too dangerous for occupation until nearly the present day; along the stream of the Mariposas was the customary camping-ground of the Mexican troops employed against the troops Indians in that region, and thus became familiarly known. In the year 1843, Alvarado, then Governor of California, directed Don Santiago Estrada, the officer commanding the Departmental troops employed in the Valley of the San Joaquin, to indicate to him such place in the Valley as from his intimate knowledge of the localities he considered best suited to the establishment of a rancho. That officer, in reply, directed him to select the Mariposas. He informed him, that in pursuit of the Indians, he had passed up the valley of the stream, and beyond it, to the foot of the Sierra Nevada (Snowy Mountains), that he had found it to contain very many small and beautiful valleys, having permanent streams, affording water all the year, and that the whole face of the country was covered with nutritious grapes and well wooded with varieties of timber; that on these accounts it was eminently adapted for a rancho, and he accordingly recommended it as the best he knew. Upon this representation Alvarado applied for the place shortly after the arrival of Don Manuel Micheltorrena, Governor and Commanding General of the two Californias. In his application he informed the Governor, that by reason of the hostility of the Indians he could not then make such an examination of the country as would enable him to lay before him a survey of the land for which he asked, but that he would do so at some future time when the condition of the country permitted.

Agreeably to the customary forms of law, this petition was referred by the Governor to the judicial authorities of the District, for information as to whether the land asked for was vacant, and whether there existed any impediment in the way of making the grant. A favorable reply having been returned Micheltorrena issued a decree declaring Alvarado owner of the land lying between the Sierra Nevada and the rivers Chanchilles, Mercedes, and San Joaquin, and an additional title declaring that Alvarado had by his patriotic services made the Government his debtor, and making this grant of land the consideration for his public services, was issued in the customary form. The Mariposas and Chanchilles Indians at that time were and nearly to the present day have continued to be among the most warlike in California, and no settlement could be made by Alvarado. In 1844, the year of the grant, also commenced the civil war, which in the following year ended in the expulsion of Micheltorrena and the Mexican troops from California. These troubles rendered it impracticable to spare the troops necessary to survey the land and give judicial possession. In February, 1847, the land was conveyed to the present claimant, by whom an attempt was made in that year to occupy, but

which his forced absence under military orders rendered abortive. A similar attempt in 1849 to occupy for agricultural purposes was defeated by the hostility of the Indians, who in May of that year killed six out of forty men encamped on the place. The immediate country was the seat of the recent Indian war. A cattle farm now maintained there is constantly in danger of destruction, and it is still difficult to find men willing to live there, except collected together in considerable numbers.

The final grant was made on the 29th day of February, 1844, by the Commanding General and Governor of the Californias, Don Manuel Micheltorrena, who was sent to California during the dictatorship of Santa Anna, and under instructions which invested him with the same plenary and extraordinary powers in these departments, that Santa Anna himself possessed in Mexico. A certified copy of the original application of Santa Anna to Micheltorrena; of the reference by this officer to the Secretary of State; of the consequent reference to the prefect of the district; of his reply; of Micheltorrena's decree, declaring Alvarado owner of the land lying between the Sierra Nevada, the San Joaquin, the Merced and the Chanchiles Rivers, together with a copy of the original deed of transfer executed to John Charles Fremont on the 10th day of February, 1847, are herewith laid before the commission, and are relied on by your petitioner as the documentary evidence to establish his claim: within his knowledge there are no conflicting claims. The facts stated in this petition are of general notoriety, and can be substantiated by the testimony of numerous witnesses, for the obtaining of which your petitioner prays that all proper process and notice may be ordered. The accompanying map exhibits the natural boundaries mentioned in the petition and decree, and the tract within the red lines, containing about ten leagues in extent, shows what had been long commonly known as "Las Mariposas," and as such granted by the title in form of February 29th, 1844, and now claimed by your petitioner.

(Signed) JOHN CHARLES FREMONT.

San Francisco, California, January 21st, 1852.

Filed January 21st, 1852.

(Signed) J. B. CARR,
Sec'y.

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:—

Monday, January 26th, 1852.

In Case No. 1, John C. Fremont, the following motion was filed, to wit:—

In the matter of the Claim of John C. Fremont to ten leagues of land called Las Mariposas.

To the Honorable the United States Commissioners for the adjudication of California Land Claims.

John C. Fremont, who has filed his claim for ten leagues of land called the Mariposas, granted by Governor Micheltorrena to Juan B. Alvarado, and by the latter conveyed to said Fremont, respectfully represents, that owing to the circumstances mentioned in his petition and accompanying documents, the said grant was never located by any actual survey, but that in the year 1849 a rough sketch or plan of the ten leagues covered by said grant was made and afterwards filed in the Office of the Surveyor General for California, and a copy thereof accompanying said petition. Said Fremont further declares that the said sketch represents the lands asked for and granted to the said Alvarado, and that the said Fremont took possession thereof accordingly in 1849, and has ever since continued to possess and occupy the same without any actual survey or marking of boundaries.

Said Fremont further represents that (as shown by the official reports, as shown, on which the grant to Alvarado was founded) all the lands within the limits mentioned in said Grant were vacant at the time of the grant, and that by the express terms of the decree and grant in favor of said Alvarado, as well as by the undoubted law and usage at that time prevailing in this country, the grantee had the absolute right to select and locate the quantity given by the title (in this case ten leagues or sitios) in any part of the tract included in the limits described by the title, as is evident by the very terms of the title, and can be fully and clearly proved by the evidence of the law and usage referred to; the said Fremont therefore prays your Honorable Board to make an order directing an initiatory survey under the superintendence of the United States Surveyor General of California to be made of the land known by the name of Las Mariposas, to the extent of ten sitios de ganado mayor, or within the limits of the Sierra Nevada and the rivers called the Chanchiles, the Merced, and the San Joaquin, locating the said quantity of ten sitios according to the claim of said Fremont, and having reference to the said sketch or plan, but in such manner as to confine said location within the said limits, and to include in the survey so to be made, the said quantity of ten sitios.

(Signed) JONES, TOMPKINS & STRODE,
and R. A. LOCKWOOD,
for Claimant.

Filed January 26th, 1852.

J. B. CARR,
Sec'ty.

Wednesday, January 28th, 1852.

In Case No. 1, John C. Fremont, motion filed by the counsel for the claimant sustained, and the following order of survey granted, to wit:—

For the purpose of determining with precision and certainty the limits and boundaries of the land claimed by John C. Fremont in

his petition No. 1, pending before the Commissioners, it is on motion of the counsel for the claimant, ordered, that an initiatory survey under the superintendence of the United States Surveyor General of California be made of the land known by the name of "Las Mariposas" to the extent of ten sitios de ganado mayor, within the limits of the Sierra Nevada and the rivers called the Chanchiles, the Merced and the San Joaquin, locating the said quantity of said ten sitios according to the claim of said Fremont, and having reference to the sketch or plan annexed to his petition, but in such manner as to confine such location within the said limits, and to include (in) the survey so to be made the said quantity of ten sitios. But this order is not in any manner to determine as against the United States either the question of title, the construction of the grant, or the location, boundaries or extent of the land to which the claimant may be entitled.

Wednesday, August 11*th*, 1852.

In Case No. 1, John C. Fremont, Juan B. Alvarado filed a release in his favor, executed by the claimant, rendering said Alvarado a competent witness in this case, which release is in the words and figures as follows, to wit:—

Vide 65 page of this transcript.

In the same case the deposition of Juan B. Alvarado, a witness in behalf of the claimant, taken before Commissioner James Wilson, with exhibit marked "A" annexed thereto, was filed and is in the words and figures as follows, to wit:—

Vide 67 page of this transcript.

Saturday, August 14*th*, 1852.

In Case No. 1, John C. Fremont, the deposition of Antonio Maria Pico, a witness in behalf of the claimant, taken before Commissioner James Wilson, was filed, and is in the words and figures as follows, to wit:—

Vide 80 page of this transcript.

Monday, September 13*th*, 1852.

In Case No. 1, John C. Fremont, the deposition of Wm. Carey Jones, a witness in behalf of the claimant, taken before Commissioner James Wilson, was filed and is in the words and figures as follows, to wit:—

Vide 86 page of this transcript.

In the same case the deposition of George W. Wright, a witness in behalf of the claimant, taken before Commissioner James Wilson, was filed and is in the words and figures as follows, to wit:—

Vide 88 page of this transcript.

Tuesday, September 14*th*, 1852.

Case No. 1, John C. Fremont, was called. The counsel for the

claimant, Mr. Lockwood, read the petition in this case with the documentary evidence, opened the argument, and case continued for further argument until 10 o'clock A. M. to-morrow.

Wednesday, September 15*th*, 1852.

Case No. 1, John C. Fremont, called. Argument by Mr. Lockwood, one of the counsel for the claimant, resumed and concluded, and on motion of the U. S. Law Agent the case continued until Saturday next at 12 o'clock M.

Friday, September 17*th*, 1852.

In Case No. 1, John C. Fremont, the counsel for the claimant filed an authenticated copy of a Spanish document on file in the office of the Surveyor General of the U. S. for California, as evidence in behalf of the claimant, which authenticated copy, marked Exhibit "F," and the translation thereof, is as follows:—

Vide page of this transcript.

Saturday, September 18*th*, 1852.

Case No. 1, John C. Fremont, called. The U. S. Law Agent commenced the argument in answer to the claimant's counsel, and concluded. Case with the evidence submitted and taken under advisement by the Board.

Tuesday, September 28*th*, 1852.

In Case No. 1, John C. Fremont, the parties litigant filed the following agreement, to wit:—

It is agreed between the claimant and the United States that the quantity of land embraced within the limits of the entire tract of land specified in the title from which the ten sitios de ganado mayor was to be taken, is more than one hundred square leagues. It is also agreed that said Fremont was always a citizen of the United States, and never a citizen of the Republic of Mexico.

R. A. LOCKWOOD,
Atty. for Claimant.

GEO. W. COOLEY,
Los Angelos, September 14*th*, 1852. *U. S. Law Agent.*

Monday, December 27*th*, 1852.

In Case No. 1, John C. Fremont, Commissioner Hiland Hall delivered the opinion and the decree of final confirmation of this Board.

Ordered, that the opinion and the decree of final confirmation of this Board, delivered this day in this case, be recorded on the journal. Which opinion and decree are in the words and figures as follows, to wit:—

1990.

No. 1. JOHN C. FREEMONT, Claimant.

(*Opinion of Commissioner Hiland Hall.*)

Opinion by Commissioner Hiland Hall, delivered December 27th, 1853.

John C. Fremont has petitioned the Board of Commissioners to confirm to him a tract of land, consisting of ten square leagues, called Las Mariposas, situated in the county of Mariposas in this State, to which he claims to have derived title under a grant from the Government of Mexico.

A preliminary survey of the land having, on application of the claimant, been ordered by the Board, and testimony taken, the case has been elaborately argued by the counsel for the petitioner and by the law agent of the United States, and it has become our duty to pass upon the validity of the claim.

Before giving a particular statement of the facts of the case, and of the objections which have been made to the confirmation of the claim, it will be proper to dispose of some questions of a preliminary character, which have been discussed by the counsel, and which have a general bearing upon the duties and powers of the Board under the act by which it was constituted.

It is insisted by the counsel for the petitioner that the powers of this commission under the Act of March 3d, 1851, over the claims upon which they are authorized to act, are much more extensive than those conferred upon the Supreme Court of the United States by the Act of May 26th, 1846, and for this superiority of powers in the commission the principal reason assigned is, that the powers with which this Board is clothed are of a political character, while those exercised by the Supreme Court are merely judicial.

We are not satisfied that there is such difference as is contended for between the character of the duties to be performed by the Supreme Court and this Board; a distinction is recognized by the Supreme Court of the United States between perfect and imperfect titles from land from the government formerly possessing the territory ceded to the United States, under the treaties of Louisiana and Florida. The doctrine of that court is that where the title had become complete and perfect in an individual prior to the cession, the Government of the United States acquired no interest in the land by the transfer of the territory; such land being completely and absolutely private property, would be protected in the hands of the owner, both by treaty and the law of nations; in such cases the title would need no confirmation from the Government of the United States, and the owner no other protection than the enjoyment of the common rights of every citizen to appear and prosecute or defend his property before the ordinary judicial tribunals of the country. United States *vs.* Wiggins, 14th Peters, 334; Choteau *vs.* Eckhardt, 2 Howard, 245; 9 How. 445. But titles which were incomplete and

imperfect at the time of the transfer of the territory, were held to stand on a different footing. Where some steps had been taken by the former government towards the appropriation of land to the ownership of an individual, but there still remained other acts to be performed in order to complete the grant, the fee was considered to have remained in such former government, and to have been transferred by the treaty to that of the United States.

The owner of such incipient title might have had a very strong claim on the justice of the former Government to complete and perfect it, and an obligation may have been devolved by treaty in that of the United States to recognize and complete it. Yet as the legal estate, after the transfer of the territory, remained in the United States, the ordinary judicial tribunals of the country would have no authority to enforce it. If the obligation to complete the title had been that of an individual, a court of chancery might properly have been invoked by the claimant; but the Government not being sueable in the courts of law or equity, the party was necessarily compelled to resort to the legislative power of the country for relief. It has accordingly been uniformly held that a party having an incomplete title under a ceding government, had no standing in court; and, although his titles might be founded on the plainest principles of equity and protected by the treaty, that it was indispensable in order to make it available to him that it should first be recognized and confirmed by the political branch of the government. Le Bois *vs.* Brumel, 4 How. 449; Choteau *vs.* Eckhart, 2 How. 275; United States *vs.* Reyes, 9 How. 153; United States *vs.* Boisdore, 11 Howard, 93. This confirmation under the Louisiana and Florida treaties was at first generally made by Congress itself, after ascertaining the facts of the case, by the reports of Boards of Commissioners appointed for that purpose, though in some instances authority was conferred on the Commissioners in certain classes of claims, and in regard to limited quantities of land, to pass finally on them, without the intervention of Congress.

By the Act of Congress of May 26, 1824, authority was given to the District Court of the Missouri and the Superior Court of the territory of Arkansas, in conformity with certain rules of decision prescribed in the act, to pass upon incomplete titles protected by the Louisiana treaty, subject to an appeal to the Supreme Court of the United States. A similar authority was subsequently conferred upon the Superior Courts of the territory of Florida in reference to the titles of land under the treaty of cession by Spain of that territory, subject to a like appeal to the Supreme Court; and the Act of 1824 has been more recently extended to titles in the State of Louisiana.

It is obvious that the Supreme Court of the United States in passing upon these titles is not in the exercise of its ordinary judicial authority, but of a delegated power which had previously belonged to the legislative power of government. Such is the view taken by that court of this authority. In the case of the United States *vs.* Dau-

terive (10 Howard's Reports, 624), which arose under the Act of 1824, as made applicable to Louisiana by the Act of 1844, and in which the claimant had presented his title before the District Court of that State, Judge Catron says: "It has been repeatedly ruled by this court that the control and recognition of claims like that now before us, were subjects belonging peculiarly to the political power of the government, and that in the adjudication of those claims the courts of the United States expound and enforce the ordinances of the political power." The authority of this Board, under the Act of March 3d, 1851, is precisely of the same character; the commissioners under that act are in the exercise of an authority delegated to them by the political power of the government, and they exercise it only in virtue of such delegation.

It is not a delegation of all political power, but of a power measured and limited by the act. In this respect it corresponds with the powers conferred on the Supreme Court by the Act of 1824. The authority of both tribunals is derived solely from the several Acts of Congress conferring their respective powers, and the one cannot move step beyond the boundaries of its powers than the other. Whether the authority which they exercise should be termed judicial or political is, probably, so far as their extent is concerned, of little importance; the authority is exercised by both tribunals under judicial form and like judicial power, in conformity prescribed rules of decision. By whatever name the power exercised by this Board may be called, its extent must be measured and limited by the rules of adjudication laid down in the act for its government, and we disclaim any authority whatever under any pretence to transcend those principles.

Without entering into a critical examination and comparison of those rules and principles of decision which are laid down for the government of the courts under the Act of 1824, and of the commission by the Act under which it is constituted, it may, I think be said that in general they are substantially the same. The commissioners in deciding upon the validity of claims are to be governed by the treaty by which the territory where the land is situated was ceded to the United States, by the law of nations, by the laws, usages, and customs of the government from which the claim is derived, and by the principles of equity. All these principles, though not precisely in the same language, are laid down for the government of the courts in the Act of 1824. The only other rule of decision found in the Act of 1851, is that which makes the decisions of the Supreme Court, so far as they are applicable, binding on the commissioners. Under this rule the principles of decision by the commissioners must of course correspond with those of that court. It does not, therefore, seem to be very apparent that the rules and principles on which this Board are to act in the adjudication of titles are more liberal than those prescribed in the Act of 1824.

In one particular the jurisdiction of the Board on the subjects on

which it may act, is more extensive than that of the courts under the act before mentioned. Under that act the authority of the court is confined to the determination of titles of a particular description, viz: to grants, concessions, warrants, or orders of survey legally made, granted, or issued, "and which under the former government might have been perfected into a complete title: this would of course exclude any other form of title, if there be any, than those enumerated, as well as titles that had already been perfected. It has accordingly been held by the Supreme Court that its jurisdiction was limited to the consideration of the incomplete titles mentioned in the act, and that it had no authority to pass upon titles which had become perfect; U. S. *vs.* Reyes, 9 How. 144; U. S. *vs.* Philadelphia and New Orleans, 11 How. 609.

In the Act constituting this commission, no particular forms of classes of titles are mentioned, but the Board is authorized to decide upon any right or title derived from the Spanish or Mexican government; thus embracing within its jurisdiction every form and description of title, whether perfect or imperfect.

But if the general rules or principles of decision by which this Board is to be governed in their adjudication of claims should be found to be the same which were obligatory upon the court, under the Act of 1824, it would not necessarily follow that the two tribunals in their action upon titles extended in a similar manner, should come to the same conclusion.

The laws, usages, and customs of the country from which the claims are derived that are to be acted upon by this Board, are generally those of Mexico; while the laws, usages, and customs which were to be regarded by the court under the act before mentioned, were those of France and Spain. In regard to claims which come before this Board derived from the Spanish Government, it cannot be taken for granted that the laws, usages, and customs under which they originated, were the same that prevailed under the same government in Louisiana and Florida; the treaties also which controlled the action of the Supreme Court under the before mentioned act, and those in addition to it, were not the same that is made the rule of action of this Board. In consequence of these important differences in the condition of the claims upon which the two tribunals are respectfully required to pass, it might very well happen that titles which would be valid under the laws, usages, and customs governing one tribunal, might be invalid under those controlling the decisions of another. This difference between the laws and treaty by which the validity of California land titles would depend, and those on which the decisions of the Supreme Court are required to rest, was perceived by the framers of the Act of March 3d, 1351, and it was accordingly provided in that act, not that the decisions of the Supreme Court should form a universal rule for the action of this Board, but that the decisions of that court should govern those of the commissioners only "so far as they were applicable."

It would greatly lighten our labors, as well as relieve us from an immense responsibility, if we could find a guide for all our actions as Commissioners in the decision of that justly venerated tribunal. But unfortunately for us, a great portion of the questions which we are required to pass upon are such as have never been presented to that Court, and we must consequently form the best judgment on them in our power without the aid of such desirable judicial authority. In the difficult and embarrassing duty which we are called upon to perform, we derive no little consolation from the knowledge that the errors which we may commit in the adjudication of titles, are subject to the revision and correction of that high judicial tribunal of the Government for whose learning and integrity we, in common with the whole country, entertain the most unlimited respect and confidence.

There is one question of much practical importance, of which it is deemed necessary to take some notice before proceeding to the examination of the facts of the present case. It relates to the manner in which the Board is to obtain a knowledge of the character and extent of the rules and principles by which they are to be governed in deciding upon the validity of claims. There can be no doubt but that we can take judicial notice of the treaty with Mexico, the law of nations, and the principles of equity, and of the decisions of the Supreme Court of the United States, and that we may seek for information regarding them from the ordinary sources of legal knowledge to be found in printed books and authenticated documents. But the laws, usages and customs of Spain and Mexico, from which the claims are derived, may be said to stand on a different footing, and to require to be proved before us as facts in each particular case before we can be required to act upon them.

I think a strong objection to such a doctrine would be its impracticability. The laws of Mexico are those of old Spain, except where they have been changed by legislation; and it is a question of both Spanish and Mexican jurisprudence, that an old law is not repealed by a new one on the same subject, but is only superseded so far as the new law is repugnant to it; the consequence is, that in order to ascertain what the law of Mexico was at any given time, it would not only be necessary to consult the numerous volumes of its published statutes and decrees, but frequently to resort either directly or through approved digests to the numerous and extensive codes of Spanish Law which have been promulgated at different periods of the monarchy.

The Act of March 3d, 1851, requires that all the evidence taken to be used before the Commissioners shall be recorded in books kept for that purpose. It seems obvious that if all the laws, decrees and regulations upon which the proper adjudication of the validity of a title may depend, are to be proved as facts and made matters of record in every individual case (as they must be, or we cannot take judicial notice of them), that the business of the Commission in the

taking of testimony, in recording it, and in making copies of the record when necessary, would not only be enormously expensive to the Government and to claimants, but would soon become so unwieldy as to prevent the hope of its being continued to any practicable result.

It is undoubtedly a principle of English and American law, that Courts are not to take notice of the laws of a foreign nation unless they are proved as facts; but I do not understand that this principle is now, or ever indeed, has been, applied to laws which formerly prevailed in any State or Territory of the Union, although such laws may, at the time they were promulgated, have been those of a foreign nation. On the contrary, I think it has always been the doctrine of the Supreme Court of the United States that such laws were in the territory where they prevailed to be judicially noticed by the Courts to the same extent that notice would be taken of the statute and common law of any of the old States of the Union.

The two first cases which came before the Supreme Court under the Act of 1824, were those of Soulard and Smith *vs.* the United States. They were argued before the January term of the Court in 1830, and continued for advisement in order that the Court might be furnished with additional information in regard to the laws of Spain applicable to the titles of the claimants. Judge Marshall, in announcing the determination of the Court to continue the case, concluded his remarks by saying: "We are far from being confident that the information is attainable, but have determined to hold the cases which have been argued under advisement until the next term, in the hope that in the mean time we may be relieved from the necessity of deciding conjecturally on interests of great importance." (4 Peters' R. 512.) Under the Act of 1842 all the evidence was to be presented to the District Court, and the Supreme Court, exercising only appellate jurisdiction, was not authorized to take testimony. If the Supreme Court had considered the laws of Spain as binding which were applicable to the titles before it as foreign laws to be used as facts, it would have been useless to have continued the case for the production of those laws. The Court, in order to have been availed of such laws, must have remanded the cases to the Court below for the purpose of having testimony taken in regard thereto, in order that it might be certified up and acted upon by the appellate tribunal.

The fact that the court continued those cases in order to look into those laws themselves, seems conclusive that they were of opinion that they might take judicial notice of them; a reference to the numerous cases which have been decided by the Supreme Court under the Act of 1824, as well as to cases arising between individuals, in which Spanish titles came into question, will show that it has never been the practice of that court to require the proof of the Spanish laws, but to take notice of them as of domestic laws, allowing them to be referred to by counsel, and read from printed books, as autho-

rity, and they have been so quoted and acted upon by the court in delivering their opinions.

It may be said that the case of the United States *vs.* Wiggins, 14 Peters' R. 334, established the doctrine that the laws of the Government formerly exercising jurisdiction over the territories subsequently acquired by the United States cannot be judicially noticed, but must be proved as facts. I do not understand the case as going that length. I think the doctrine of it is, that although the court may take judicial notice of such laws, the laws may also, especially when unwritten, be proved as facts.

In the District Court the claimants had been allowed to prove, by witnesses, the practices and customs in use in the offices of the Spanish Government from which titles to land issued. The testimony was objected to on the ground that the practice, if it existed, must be a settled rule in the judicial tribunals, and should be shown by their decisions, and not by evidence of an inferior character. The court disposes of the question with great brevity, saying, in substance, That Foreign Laws, and especially when unwritten, were to be proved as facts, and that Florida, having been foreign to this country in 1815, when the transaction took place, the evidence might be admitted. No intimation is given in the opinion of the court, that the former laws of Florida must be proved necessarily as facts, and were not proper subjects for the judicial knowledge of the court. That the court did not intend to be understood as so deciding, seems evident from the fact that Judge Catron, in a subsequent part of the same opinion, spoke of the translated collection of Spanish ordinances and decrees made by Mr. White, the first edition at the request of the Attorney General, and a second enlarged edition, then recently published by him on his own suggestion, from which latter edition the learned judge proceeds to quote the Spanish ordinances and decrees applicable to the title of Mrs. Wiggins, the claimant, and upon such ordinances and decrees thus judicially noticed to found the decision of the case.

But if the case of the United States *vs.* Wiggins could be considered as casting doubt upon the authority of the court to take judicial notice of the laws, usages, and customs formerly prevailing in territories acquired by the United States from foreign Governments, that doubt would seem to be wholly removed by the judgment of the Supreme Court in the case of the United States vs. Turner, 11 Howard's Repts, 668. In that case a motion had been made by the claimant in the court below, for an issue to be tried by a jury, whether the grant in question was perfect and complete, or not, by the laws of Spain in force in the Province of Louisiana when it was made, which motion had been denied by the District Court. The motion was made and sought to be sustained, on the ground that the laws of Louisiana, prevailing at the time of issuing the title, were foreign laws, and consequently to be proved as facts. The question does not appear to have been made in the Supreme Court, whether

it was the province of the court or jury to pass on foreign laws, when proved, but only whether the laws in question were to be regarded as foreign laws or not. That was the only question discussed by the court, whether, in regard to the propriety of ordering an issue, and the court fully and directly decided it, holding and declaring that "The Spanish laws which formerly prevailed in Louisiana, and upon which the titles to lands in that State depend, must be judicially noticed and expounded by the court, like the laws affecting the titles to property in any other State, and that they were not, in any sense, to be regarded as foreign laws to be proved as facts." This decision should, I think, be understood as merely affirming the correctness of the practice which had previously prevailed in the Supreme Court, as not being inconsistent with the case of the U. S. *vs.* Wiggins, which case merely permitted the use of parol testimony as an auxiliary aid to the court in acquiring a knowledge of Spanish usages, founded on the difficulty of ascertaining such usages by a court not supposed to be familiar with them.

In regard to the extent to which the laws, usages and customs of Spain and Mexico formerly prevailing in California, and matters of history connected with them, may be judicially noticed and the sources from which such judicial notice may be properly obtained, little need be said. The same rule must be applied to them that is applicable to subjects of judicial knowledge within any of the old States of the Union where the common law has prevailed. The matters in general which may be judicially noticed are stated with much care and accuracy by Mr. Greenleaf, in his Treatise on Evidence, sec. 45 and 6, with reference to the leading authorities on the subject. After enumerating a great many things which may be judicially noticed, he concludes his remarks on the subject by saying: "In time courts will generally take notice of whatever ought to be generally known within their jurisdiction. In all these and the like cases, if the memory of the judge is at fault, he resorts to such documents of evidence as may be at hand and he may deem worthy of confidence."

Without undertaking to specify the several matters which may be the proper subjects of judicial notice in our examination of land titles, it may, I think, safely be said, that we may take such notice of the general history of Spain and Mexico, including that of California; of the authority conferred upon and exercised by the Governors and other public officers of California, executive, legislative and judicial; of the laws, usages and customs of Spain and Mexico, prevailing in California, and especially of the laws, decrees and regulations made at different periods in relation to the granting of public lands, and of the general practice and usage of the public officers within the territory in making such grants, and in giving them effect and validity; and in short that we may and should take such judicial notice of all matters connected with our duty as Commissioners, as

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ought to be generally and publicly known in California. And in that our judicial knowledge may not be at fault, we should consult approved works of history and law, the public statutes and decrees of the country, the public archives and record of the former government and of the judicial tribunals, and such other authentic sources of knowledge as will be best calculated to impart the most accurate and reliable information.

It has been deemed necessary thus to consider the subject of judicial knowledge somewhat at large, not only because of its intrinsic importance in the consideration of this and other California titles, but because some doubt has heretofore been expressed in regard to it.

The land which the present claimant asks to have confirmed to him is claimed under a grant made to Juan B. Alvarado by Governor Manuel Micheltorrena, in the month of February 1844.

The grant originated in a petition of Alvarado to Governor Micheltorrena dated Feb'y 23d, 1844, in which the petitioner states that being the owner of but a small portion of land, which he had purchased and which was not sufficient to support his cattle without injury to the estate, and desiring to increase his stock and of promoting the agriculture of the country, he solicited the Governor according to the Colonization laws to be pleased to grant him ten square leagues of land, lying north of the river San Joaquin, and within the limits of the Sierra Nevada (Snowy Mountains) on the north, the river Chanchiles on the east, that of the Merced on the west, and the before mentioned San Joaquin, by the name of "Las Mariposas." The petitioner then proceeds as follows: offering to present to Your Excellency the proper plan or draught thereof as soon as the same shall be made with exactness, not doing it at this time for the difficulty of being a wilderness country, and because I desire that my claim for this cause may not be delayed.

Upon the margin of this petition, General Micheltorrena made the following endorsement:—

"*Monterey*, 27*th Feb'y*, 1844."

"Let the Secretary of State report, and he may require such other reports as he may deem expedient, should he need them.

"MICHELTORRENA."

The petition was then referred by the Secretary of State, by another endorsement in writing, to the Alcalde of San José and the Alcalde Antonio M. Pico, on the 29th of February, 1844, reported that the land was entirely vacant, that it did not belong to any individual, town or corporation, and that he believed for that reason as well as the petitioner's being meritorious for his patriotic services and commendable circumstances, there was no impediment to the granting to him the land in fee.

On the same day the Secretary of State, Manuel Jimeno, returned the petition, with the report of the Alcalde to the Governor, and also

reported to him over his own official signature, that according to the report of the Alcalde and the information he had acquired from persons who knew the land, it was ascertained that the same might be granted to the petitioner, "who," the Secretary added, "might be favorably considered for the services which he had rendered to the Department."

On the same day the Governor endorsed on the papers, the following decree, viz:—

"*Monterey, February*, 1844."

"Let the title be issued, expressing that he (the petitioner) is worthy for his patriotic services, and consequently worthy of preference.

"MICHELTORRENA."

In accordance with this decree, a grant of the land petitioned for, in the usual form of grants in full property made and signed by the Governor, and countersigned by the Secretary of State, was issued and declared to the grantee, having date Feb'y 29th, 1844, and is now produced and given in evidence by the claimant. The original petition of Alvarado, together with the reports of the Alcalde and Secretary, and the decree of the Governor before mentioned, with a copy of the grant issued to the petitioner, are all found on file in their proper place, in the public archives of the former government, now in the custody of the Surveyor General of the United States for the State of California. Upon the original grant to Alvarado there is an entry over the signature of the Secretary of State that this patent is registered in the proper book, "on the reverse of folio 6," and in conformity to this entry a record is formed in the "Book of Titles for 1844," showing that the grant was issued to Alvarado as before stated. The authenticity of all these papers has been fully proved, and of their genuineness no question has been made.

It is further shown that on the 14th of February, 1847, Juan B. Alvarado duly conveyed the land thus granted him for a valuable consideration to John C. Fremont, the present claimant.

It has been fully proved before us, that at the time of the making of the grant to Alvarado, the tract of country where the land is situated was a wilderness, frequented by wild and hostile Indians, and that it could not be visited even for the purpose of making a plan or sketch of the land except under the protection of a military force, and that it continued in such condition until the year 1849. That in the year 1849, as soon as it became practicable to do so, Alvarado the original grantee, at the request of the present claimant, caused a map of the land claimed to be made, under which the claimant took and continued the possession hereafter stated: which map afterwards, on the 21st of November, 1851, was filed by the claimant in the office of the U. S. Surveyor General for California, and in conformity to which, and in accordance with the description

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of the land contained in the grant, the preliminary survey before mentioned has been executed under the superintendence of the Surveyor General.

It has also been agreed by the counsel for the purpose of the hearing before this Board, that the quantity of land embraced within the limits described in the grant is not less than one hundred square leagues.

It has also been shown that at the time of the transfer of the land to the present claimant, he was a Lieut. Colonel in the Army of the United States serving in California; that in the Spring of 1847, he was ordered by the Commanding General to return to the United States by land; that on his arrival at Fort Leavenworth he was placed under arrest, and ordered to the City of Washington, where he was necessarily detained in attending before a Court Martial, and in waiting the action of the Executive upon the sentence of the Court until the Spring of 1848; that he immediately thereafter set about making preparations for returning to California to take possession of the land now claimed, and that after employing several men to accompany him to California, and to aid him in making a settlement on the land, he set out on his journey across the country; was detained by the snow among the mountains, losing by the frost a large portion of his party, and did not make this Territory until the month of May, 1849. That in the summer of 1849, he took possession of said land and commenced moving on it, and has continued to occupy it ever since, having erected a number of buildings upon it, one of which is occupied as a dwelling by a resident agent, and another as a farm house, by a person in charge of cattle belonging to claimant; that he has executed leases of portions of the lands which are occupied by tenants, and that he has made other extensive improvements on it.

It is also in evidence that Juan B. Alvarado, the original grantee of the land, had been for a long time in the public service in California in various capacities, both civil and military, and that for a period of about five years from 1838 to 1843, he had been Political Chief and Governor of the Department, and that he had performed service which might well entitle him to the preference of given by the Governor, for patriotic services in making the grant.

These are the leading facts connected with the title of the claimant. There are others which will be noticed in considering the several objections which have been made to the confirmation of the claim.

Upon this general view of the case, it may be remarked that the grant to Alvarado is in the usual form of grants of land in California; that it was made as well in reference to the colonization or settlement of the country as in consideration of meritorious services performed for the Government by the grantee, and that the genuineness and fairness of the grant is beyond doubt or question.

In passing upon the validity of this claim, it is the duty of this

Board to be governed by the principles of decision laid down in the Act, under the Act by which it was constituted by the treaty of Guadaloupe Hidalgo, by which the Territory of California was ceded to the United States, and which treaty is the foundation of all the other rules of decision. The inhabitants of said Territory were, among other things, to be maintained in the protection of their property, and the full enjoyment of their property.

The word "*property*," used in a similar manner and for the same purpose in the treaty by which Louisiana was ceded to the United States, has undergone the judicial interpretation of the Supreme Court of the United States, and is therefore not the subject of doubt or controversy.

The doctrine of the Supreme Court in regard to the obligation imposed by that treaty upon the Government of the United States, was first announced in the cases of Soulard and Smith *vs.* the U. S., 4th Peters' Reports, 511, and has frequently been reiterated and confirmed by other decisions. Judge Marshall in those cases lays down the principles which were considered as imposed by the treaty in the following language:—

In the treaty by which Louisiana was acquired, the United States stipulated that the inhabitants of the ceded territory should be protected in the enjoyment of their property. The United States, as a just nation, regard this stipulation as the avowal of a principle which would have been equally sacred, though it had not been inserted in the contract.

The term "property," as applied to lands, comprehends every species of title, inchoate and incomplete. It is supposed to embrace those rights which lie in contract; those which are executory, as well as those which are executed. In this respect, the relation of the inhabitants has not changed, the new Government takes the place of that which has passed away.

In the full confidence, continues Judge Marshall, that this is the sentiment by which the Government of the United States is animated, and which has been infused into its legislation, the court have sought sedulously for that information which would enable it to discover the actual rights of the party, to distinguish between claims founded upon legitimate contracts with those authorized to make them on the part of the Crown, or its immediate agents, or such as were entirely dependent on the mere pleasure of those who might be in power, such as might be rejected, without giving just cause of imputation against the faith of those in office.

This extract from the opinion of Chief Justice Marshall in the first reported case under the Act of 1824, embodies the great and leading principles by which the title of the present claimant and all others coming before us are to be tested. We are not merely to ascertain whether the title paper of the claimant was executed with all the formalities required by the Mexican laws to make it a full and perfect grant; for, as we have already seen, if such were our only

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duty, it would be a work of supererogation, for such titles need not the confirmation of this or any other tribunal to make them valid. But we are also further to inquire whether, in the manner and under the circumstances under which the title issued in the nature of a contract, was imposed on the Mexican authorities which ought in equity and good conscience to be carried into effect, and which could not, in the language of the Chief Justice, "be rejected without giving just cause of imputation against the faith of those in office.

Regarding the annunciation of the venerated Chief Justice in the cases of Soulard and Smith, subsequently recognized and approved by the Supreme Court in other cases, as the just basis on which this commission ought to act, we shall proceed to enquire whether the title of the present claimant is or is not one which ought to be considered as property under the treaty of cession of the territory of California; whether, by the laws, usages and customs of Mexico, prevailing in California, it would have been regarded and respected as property, and whether, by the law of nations, the principles of equity, and the decisions of the Supreme Court which are applicable, it ought to be treated as a valid or invalid claim by this Government.

Keeping in mind these great and leading principles, we proceed to the examination of the claimant's title.

Numerous objections are made by the Law Agent to the confirmation of this claim, which it will be necessary for us to consider and pass upon. Our labors will be considerably lightened, however, by the fact that several of the objections are common to other California titles, and have been considered and decided by the Board in the leading case of Cruz Cervantes, or in other subsequent cases.

In order to understand the full force of the objections to this claim, it will be necessary to give a copy of the title paper which was issued by the Governor to the grantee. It is as follows, viz:—

"Manuel Micheltorrena, Brigadier General of the Mexican army, Adjutant General of the Staff of the same, Governor and Commandant General of the Department of the Californias."

"Whereas Don Juan B. Alvarado, Colonel of the Auxiliary Militia of this Department, is worthy for his patriotic services to be preferred in his pretension for his personal benefit, and that of his family, for the tract of land known as the "Mariposas," to the extent of ten square leagues (sitios de ganado mayor), within the limits of the Snow Mountain (Sierra Nevada), and the rivers known by the names of the Chanchilles, of the Merced and San Joaquin, the necessary requirements, according to the laws and regulations, having previously been complied with, by virtue of the authority on me vested, in the name of the Mexican nation, I have granted to him the aforesaid tract of land, declaring the same, by these presents, his property in fee, subject to the approbation of the Most Excl't the Departmental Assembly, and to the following conditions:"—

First. "He shall not sell, alienate, nor mortgage the same, nor subject it to taxes, entail, or other incumbrance.

Secondly. "He may enclose it without obstructing the roads or the right of way. He shall enjoy the same freely, without hindrance, destining it to such use or cultivation as may best suit him; but he shall build a house within a year, and it shall be inhabited.

Thirdly. "He shall solicit from the proper magistrate the judicial possession of the same, by virtue of this patent, by whom the boundaries shall be marked out, on the limits of which he (the grantee), shall place the proper landmarks."

Fourthly. "The tract of land granted is ten sitios de ganado mayor (10 square leagues), as before mentioned. The magistrate who may give the possession, shall cause the same to be surveyed, according to the ordinance, the surplus remaining to the Nation for the proper use."

Fifthly. "Should he violate these conditions he will lose his right to the land, and it will be subject of being denounced (pretended for) by another."

Therefore, I command that these presents being held firm and binding, and that the same be registered in the proper book, and delivered to the party interested, for his security, and other purposes.

Given in Monterey the 29th day of February, in the year of 1844."

(Signed,) "MANUEL MICHELTORRENA."

(Signed) "MANUEL JIMENO,"
Secretary.

"This Patent is registered in the proper book, on the reverse of folio 6."

(Signed,) "JIMENO."

The first objection that is made to the confirmation of the claimant's title, is that the grant has not been approved by the Departmental Assembly. This objection arises on the face of the grant, it purporting to have been made subject to such approval, and no approval being shown.

By the Constitutive act of the Mexican Congress of the 31st of January, 1824, the form of Government was declared to be that of a Federal Republic, and the Mexican Territory was divided into States and Territories similar to that of the United States. On the 18th of August, 1824, a law was enacted by the same Congress, containing certain general provisions, in conformity to which it was declared that the public lands within the States, as well as in the Territories of Mexico, might be granted, authorizing the Legislatures of the States to form laws and regulations for the colonization of the lands within their respective limits, in accordance with the provisions of that law, and also providing that the Executive Govern-

ment of Mexico might proceed to the colonization of the territories (of which California was one), in conformity to the principles of that law. In execution of the last mentioned provision, the Executive of Mexico, on the 21st of November, 1828, established certain regulations for the colonization of the lands in the Territories, which regulations, together with the law of 1824 on which they are founded, are supposed to have stood, continued in force in California until the conquest of the country by the United States.

See Ex. Doc., No. 17, 1st Sess. 31st Congress, pp. 139 to 142.

By these regulations the Governors of the Territories were authorized to grant lands, but it was provided that the grants should not be definitely valid without the previous consent of the Territorial Deputation (subsequently called the Departmental Assembly), to which it was made the duty of the Governor to forward the respective documents, and in case of his failure to obtain such approval, he was then required to report the documents to the Supreme Government, for its decision.

Under the provisions of those regulations the present grant is declared to be issued, subject to the approval of the Most Excellent Departmental Assembly.

We have held in cases already decided, that we would not regard the want of evidence that a grant had been approved by the *by the* deputation or *or* assembly, as necessarily rendering it unworthy of confirmation, and we have seen no reason to question the correctness of our decision.

Without repeating in detail the reasons given in those cases for the conclusions to which we came, it may be proper to say that by evidence taken before us and by reference to the public archives of the former government, it appears to have been the uniform practice of all the Governors of California (except in a few individual instances and those principally in the term of Gov. Figuerroa) to issue grants previous to any action of the Deputation or Assembly upon the titles and subject to such approval as in the present grant. That under grants thus issued by the Governor, the grantees took possession of their lands, either judicial or otherwise, at their election, and that they were allowed to remain in the quiet occupation and enjoyment of them; that the lands were regarded by individuals, by public officers and judicial tribunals, as the property of the grantees; were the subjects of transfer by instruments of conveyance, and of inheritance and devise, and were sold under probate and insolvent laws for the payment of debts; that titles in considerable numbers that had for many years been issued by the Governors, either by the neglect of the Governors or of the Assemblies, had never been acted upon by the latter; that during several years of the latter part of the time of the Mexican rule in California, the political affairs of the territory were in a semi-revolutionary and unsettled state, and that in consequence but few meetings of the Departmental Assembly were held,

and when held were brief and almost exclusively devoted to public affairs; that but a small portion of the titles issued at as late a period as that of the present claimant, appear ever to have been presented to the Assembly; that the journals of the Assembly, especially those of the few last years, are imperfect and confused, leaving it quite probable that titles may have been approved of which no record can be found. Under these circumstances the Board were of opinion that it would not be in conformity with the provisions of the treaty of Guadaloupe Hidalgo, by which the people of California were to be protected in the full enjoyment of their property, nor in conformity to the laws, usages and customs of the country from which the title was derived, nor in accordance with the principles of equity, to treat the titles issued by the Governors as mere nullities because of the want of the action of the Assemblies upon them, or perhaps rather from the want of the evidence of such action. This and other considerations connected with this question, as stated in the case of Cruz Cervantes and Pearson B. Reading, heretofore decided, and in conformity with those cases and the views now expressed, we must hold that the want of the approval of the Departmental Assembly is not a valid objection to the confirmation of this claim.

The next question that arises on the face of the grant is that which grows out of its first condition, which provides that "the grantee shall not sell, alienate, nor mortgage the land, nor subject it to any taxes, entail, or other incumbrance."

It is objected by the law agent that the present petitioner is not entitled to a confirmation of the claim, he being a purchaser from the original grantee, and the land by the terms of the grant not being subject to alienation.

The earliest grant made in California under the Colonization Law of 1824, appears to have been by Governor Figuerroa in 1833, in which was inserted as a condition a qualified restriction against alienation, as follows:—

"That the grantee shall submit to those conditions which may be established by the regulations to be made respecting the distribution of vacant lands, and that in the meantime neither the grantee nor his heirs shall divide or alienate the land, nor impose ground rents, entail reversion, mortgage, or any other burthen, although it may be for pious purposes."

The restrictive language of this condition, thus first inserted in California grants under the law of 1824, was evidently borrowed from the royal regulations of October 24th, 1781, adopted for the government of California, which provides only for the granting of village lots, which were not to be divided, or sold, or encumbered, but were to descend to single heirs of the grantees in perpetual succession. (Document No. 17, pp. 136.) It does not appear to have been contemplated by Figuerroa that the restrictions against the division and alienation of the land under the law of 1824 would be perpetual, but that it would only remain until further contemplated

regulations for granting vacant lands should be formed, and would then depend for its continuance upon the character of such regulations. This qualified restriction against the division and alienation of the land, in substantially the same language, is found in most, if not all, of the grants up to the years 1836 or 1837, and in many of a later date. But after the formation of future regulations had become altogether improbable, the qualifying part of the restriction which referred to them appears to have been left out of many of the grants, and also the restriction against the division of the land, and when the restriction was retained in any shape, it became, as in the present case, an absolute prohibition of alienation. The omission of this condition in some of the grants and its insertion in others, as far as can be discovered, was altogether arbitrary and without system or object. But whatever may have been the cause of its insertion in the different forms which it has assumed in different grants, or of its omission in others, we are agreed, as we have held in several previous cases, that the insertion of any prohibition against alienation in the grants of the Governors of California was unauthorizedly the colonization law of Mexico, and that all such conditions in grants were consequently illegal and void.

By the decree of the Spanish Cortes of January 4th, 1813, for the reduction of the public lands to individual ownership, and which is found in Galvan's collection of decrees and ordinances of the Cortes which were in force in Mexico, published by order of the Mexican government in 1829, all grants of public lands were to be made in full ownership and subject to alienation, and the grantees were prohibited from entailing them or transferring them in mortmain. Galvan, 57, 58, Art. 2 & 8, Sen. Doc. No. 18, 1st September, 31st Cong. 56, 57.

By the decree of the Cortes of Spain of the 27th of September, 1820, all real estate was declared to be discharged from every species of entailment, and the possessor was authorized to dispose of one half of it freely, and it was declared that on his death the other half might in like manner be disposed of by his successor; and it was further provided that no person should in future be permitted, under any pretext, to impose any species of entailment on any kind of property or rights, nor directly or indirectly to prohibit its alienation. Galvan, 132, 135, Arts. 1, 2 & 3; Schmidt's Civil Law of Spain and Mexico, 321, 329.

By the decree of the Mexican Congress of August 7th, 1823, it is declared (Sec. 1) that "all property which has been at any time entailed, ceases to be so from the 20th of September, 1820, by virtue of the law of that date (the decree of the Cortes before mentioned), and shall continue to be absolutely free, and no one in future is permitted to entail such or any other property." And the provisions of the decree of September 27th, 1820, so far as they relate to the free alienation of property, are reasserted and reaffirmed in this

decree of the Mexican Congress. 2 Galvan's Decrees of the Mexican Congress; Schmidt's Laws of Spain and Mexico, 309.

These decrees of the Cortes and of the Mexican Congress were in force in Mexico when the colonization law of August, 1824, was enacted. That law did not impose any new restriction on the right of alienation, but, on the contrary, evidently contemplates the grants to colonists would be made in full ownership, or, in the language of the common law, "*in fee.*"

The provision in the 13th article, that the "new colonists cannot dispose of their property in mortmain," very clearly implies that they might dispose of it in any other manner; and the 12th article of the Regulations permits colonists to alienate their lands. Indeed, the whole tenor of Mexican legislation was entirely opposed to any restriction against the alienation of property, and we have no hesitation in holding, as we have done in former cases, that the restriction against alienation found in the grant in the present case is null and void, and that it forms no valid objection against the confirmation of the claim.

It may be proper to notice in this place another objection which has been made to the conveyance from Alvarado to the present claimant. It is said to be invalid because the claimant was at the time an alien to the Government of Mexico, and aliens were by the laws of that government prohibited from holding lands in California. The conveyance appears to have been made Feb'y 14th, 1847, when the full sovereignty was "de facto" in the United States.

It is a settled principle of international law, that the conqueror may prescribe such rules for the government of a conquered people as he may choose. It was only by sufferance that any of the laws of Mexico were allowed to remain in force in California after the conquest, and it would seem to be very near an absurdity to suppose that those which imposed disabilities on the conquerors were among them.

It is, indeed, well known that during the period that the Mexican laws were allowed to remain in force in California, they were in numerous instances executed by American citizens elected to civil offices which had been created by Mexican laws.

The Mexican laws prohibited foreigners from holding civil offices, as strongly as it did from holding lands. If the disability after the sovereignty of Mexico had ceased could continue in the one case, it could equally in the other. We have no doubt it terminated in both with the sovereignty of that government.

The next objection to the claim is founded on the second condition in the grant, which is "that the grantee may enclose the land without obstructing the roads or the right of way, that he may enjoy the same fully and without hindrance, destining it to such use or cultivation as it may most suit him; but he shall build a house within a year, and it shall be inhabited."

The grantee not having built a house within a year, it is contended

that the grant has become forfeited, and therefore that the claimant is not entitled to a confirmation.

The language of this condition, so far as it relates to this condition, the building of a house and its being inhabited within a year, is in conformity to the Royal Regulations of 1781 before mentioned, in regard to village lots. No provision is found in the Colonization Law of 1824, or in the Regulations of 1828, specially requiring a house to be built, or specifying any time within which any other act shall be done on the land. The leading object of the law, however, was the settlement of the vacant lands of the nation, and a power in the granting officer to fix a time within which such settlement should be made, and to impose a proper penalty for a non-compliance, may perhaps be implied. A year does not appear to be an unreasonable time for that purpose, and we shall accordingly consider the condition as having been properly inserted into the grant, and proceed to enquire into the effect which it was designed to have upon the rights of the grantee and the government.

This condition is what, it may be observed in the language of the Common Law, would be termed a condition subsequent, the thing requiring to be done not being to be performed previous to the passing of the title to the grantee, but something by which the grant after it had taken effect, was subject to be defeated. Grants made by the English Crown could not be resumed at pleasure for a breach of a condition subsequent, but only upon a legal proceeding instituted for the purpose of avoiding the grant, termed an

Grants of the Crown lands made by the Governors of the New England Provinces, and probably by those of other provinces, usually contained conditions, requiring settlements to a specified extent, within limited times to be made, upon the penalty of forfeiture for non-compliance, and in numerous instances there were failures to perform the conditions. No instances are known in which the grants were held void for a non-performance of their conditions. By the Civil Law, however, which prevailed in Spain and Mexico, the non-performance of a condition of this description, even between private individuals, does not appear to have worked an absolute forfeiture, but only to have made the conveyance subject to the equitable adjudication of the proper tribunals, who according to the circumstances of the case, either gave or refused time to the party in which to perform his stipulations. 1 Domat, 184, '5, Sec. 218, 222; 2 Story's Eq., Sec. 1317.

By the terms of the present grant the penalty is not left to depend upon the general laws, but is fixed and specified. After enumerating the conditions or things to be performed by the grantee, among which is the building of a house, the grant declares what the penalty for a con-compliance shall be, viz: "That should he (the grantee) violate these conditions, he shall lose his right to the land, and it will be subject to be denounced by another."

The proceeding of denouncement had long been in use in Mexico

under the Spanish Government, in relation to mines which had ceased to be worked; when a mine had been abandoned by one who had formerly worked it, any other person might denounce it as vacant by presenting a statement of the fact in writing to the proper tribunal, and asking that possession of it might be given to him. Upon this application the former owner was cited to appear and contest the question of abandonment; if the decision was in favor of the denouncer, he was declared to be entitled to work the mines, and was placed in possession of it. Mining Ordinances of 1783, chapter 6th; Rockwell's Law of Mining, 51 to 55.

This proceeding seems to be peculiarly adapted to answer the precise objects of the Mexican Government in making its grants. Grants were not made for purposes of revenue, but, unless in consideration of previous services, were wholly gratuitous, the object being to have the land settled upon and occupied instead of remaining vacant. If a grantee failed to occupy the land as required by the terms of the grant, the government would gain nothing by recalling it, unless some other person to whom it might be conceded was ready to settle upon it. The penalty for a non-compliance with the terms of the grant in relation to the settlement of the land was therefore properly left to be enforced on the application of an individual who desired to make such settlement.

If the land remained vacant after the expiration of a year, any other person who might wish to occupy it might denounce it to the Governor as vacant, and the Governor, after summoning the grantee and hearing the parties, would decide upon it according to the circumstances of the case.

If the neglect of the grantee had been without good reason, it would be declared forfeited and a new grant made to the denouncer; but if a reasonable excuse was shown for it, and the Governor had cause to believe that the settlements would as soon be made by the grantee as another, a further time might be allowed for it. Several cases are pending before the Commissioners in which denouncements have been sustained and the lands re-granted. No instances are, however, found in which land has been successfully denounced after an actual settlement, for the reason that it was not made within a specified time. If a settlement were actually made, though ever so long after the expiration of the year, the whole object of the government would be answered, and a denouncement made under such circumstances would be wholly disregarded; although the grantee had, in the language of the grant, "lost his right to the land" at the end of the year, yet it was only on the condition that while the land was vacant it should be denounced by another; and no such denouncement having been made, the grant continued good afterwards, and was made effectual by a subsequent settlement.

That the fact that a non-compliance with the terms of the grant by a grantee in making a settlement within the year, did not render the grant a nullity, but only made it subject to denouncement, ap-

pears to have been the recognized doctrine of the Governors by their practices in cases of denouncement, but also from the decision of the higher judicial tribunal in the territory.

On the 17th of April, 1839, a grant was made by the Governor of the Californias to one Thomas Bone, with the usual conditions, among which was that which required a house to be built and inhabited within a year. On the 6th of October, more than three years after the grant, Bone, without having built a house or made any improvements on the land whatever, sold it to one Garcia and another, and received a sum in part payment, with a stipulation for a further payment at a future day.

Garcia took possession of the land, and in 1844, under the supposition that Bone had lost his right to the land for want of occupancy, and therefore had conveyed him nothing, denounced the land to the Governor as having been vacant, and asked to have it granted to him, and further to be relieved from the payment of the remaining sum he had stipulated to pay for the land. The Governor decided the place to be the property of Garcia, and referred the question of his being relieved from further payment to Bone for the land to the Superior Tribunal.

On the 12th of Sept., 1844, the Superior Tribunal decided that Garcia could not be relieved from making the payment he had stipulated, declaring "that although it was true that Bone did not occupy the land within three years, and therefore, according to his title, had lost his right, yet it was also true that the contracting parties had consented to the delivery and receipt of the possession without any denouncement of the land having been interposed by any person before this had been done. The settler makes use of what he had acquired by just title, and in this view Garcia stands bound to pay Bone." This decision would not have been made but upon the ground that the grant would remain valid, notwithstanding the failure of the grantee to comply with the condition of settlement, unless the land should, while it remained vacant, be denounced by another.

We perceive no reason to doubt that this was in conformity to Mexican law.

In the case of the present claimant, there appears not only to have been no denouncement of the land granted, but also reasonable ground for believing that if a denouncement had been attempted, it would have proved unsuccessful. The papers connected with the grant show that a settlement within the year could scarcely have been contemplated by the Governor at the time of making it, although the usual form was observed, and as any settlement earlier than 1849, when it was actually made, appears to have been impracticable by reason of the hostility of the Indians, the denouncer would have been in no better condition to make such settlement than the grantee, and would scarcely have been allowed to have superseded him, especially as the grantee had the advantage of being such for meritorious services.

The remaining conditions of the grant seem to require the grantee to solicit judicial possession of the land of the proper magistrate, and require him to measure it according to ordinance. No time is specified when these things are to be done.

If these requirements are to be considered as conditions upon which a failure of compliance was to impose the penalty of forfeiture by denouncement, which is at best doubtful, they can restore no stronger ground against the grantee than that in regard to the building of a house, and may be considered as standing on the same footing. There having been no denouncement for a non-compliance with these requirements, and no valid ground for such denouncement, we must hold, as we have uniformly done in other cases, that a non-performance of them cannot be considered as invalidating the title.

The omission of the grantee to furnish a map or plan of the land previous to the making of the grant, is also objected to by the Law Agent. By the 2d section of the Regulations of the Mexican Executive, of November 21st, 1828, applicants for grants of land are directed, in their petitions to the Governor, to state the names, country, profession, and the number, description, religion, and other particulars of their families, defining also, as distinctly as possible, and describing on a map, the land asked for. The object of these statements in the petition, as appears by the 3d Art., is to enable the granting officer to take the proper steps to inform himself "as well in regard to the tract as to the petitioner." If the statement is satisfactory to the granting officer; if it is sufficient to enable him by proper inquiry to obtain the necessary information; and, above all, if he do obtain such information, and act upon it without objection, and grant the land asked for, it would seem to be too late afterwards to question the sufficiency of the application. Under these regulations, maps, or rather rough sketches, drawn without survey or measurement, were usually presented to the Governor by applicants, though they appear to have been sometimes omitted. In many, perhaps most cases, these rough sketches are useful and important in identifying the land; but when the limits of the tract are capable of being ascertained by the written description, the map might, for every practical purpose, be dispensed with. In the present case, the limits of the land described in the petition appear to have been well known. The Alcalde to whom the papers were referred, reported that the land was entirely vacant, and when afterwards granted by the same petition, the grant would furnish all necessary information in making future grants. It is not seen how any injury would accrue either to the public or to individuals from the course adopted by the Governor for the time being, in dispensing with the production of a map, and allowing it afterwards to be supplied; and as the sufficiency of the application seems to be a matter within the Governor's province to determine, we do not think that this objection should operate against the validity of the claim.

Connected in some degree with the last objection, is another

which was also made and insisted upon by the Law Agent. It is said that the claim should be treated as invalid for the want of a severance of the land from the public domain of Mexico at the time of the treaty of cession of the territory to the United States. In support of this objection, Villebois *vs.* the United States, 10 How. 541, and the United States *vs.* Boisdore, 11 How. 63, and other recent cases of like character in the Supreme Court are relied upon.

It is not held up by these cases that there should have been an actual severance of the land from the public domain, by survey and the making of boundaries, but that the land intended to be granted should have been so described in the grant as to be capable of such separation "either by actual survey or by some ascertained mode of separation recognized by a competent authority of the former government. United States *vs.* Anedondo, 13 Peters 133; United States *vs.* Forbes, 15 Peters 173, 11 How. 127. In the cases cited by the Law Agent, the description in the grants, such as a certain number of arpents in a named district of the territory on a named creek or river, or on the waters of certain bays &c., were held to be too indefinite and uncertain to admit of an identification of the land by survey or otherwise. In these cases there was not any land pointed out as subject to individual ownership, and the grants were held void for uncertainty.

We are not satisfied that the want in the present case is liable to this objection. The system of granting land in Louisiana and Florida was very different to that in California under the Mexican colonization law. In the former there were under the Spanish government recognized official surveyors, and incipient title papers were usually issued to applicants in the form of warrants of survey or concessions, requiring the land to be surveyed, in the contemplation that after a survey a complete title would be issued. (Minard's Hiers *vs.* Massey, 8 How. 293). In California there was no such official surveyor, and, in fact, so far as is known, any private professional surveyor, until about the time of the conquest of the territory by the United States, and lands were never surveyed in advance of the issuance of the title papers. It was, therefore, necessary to adopt a different mode of separating the land granted from the public domain, from that which might under other circumstances have been pursued. Applicants were required to furnish the granting officer with as correct a description of the land as could be made, without survey or measurement, and if on inquiry by him, he was satisfied with the description and found the land vacant, he issued a grant for the whole tract embraced by the description, but limiting the quantity to be finally held by the party to a certain number of varas (miles or leagues), and providing that the surplus, when the land should be measured, should revert to the government. This has been the usual, if not the universal, mode of making grants in California under the Mexican colonization laws. All the grants that have come under my observation contain the provision that the surplus land embraced

in the description in the grant, shall, after its measurement, remain to the nation.

The effect of the mode of making grants would be to separate, at once, from the public domain, all the land described in the grant, for the use of the grantee, subject to a reduction of its limits, if by actual measurement of the specified quantity, the tract should be found of greater extent than was required; but the grantee could have no more land than that contained in the description, because the quantity might fall short of that named in the grant. Until the contemplated measurement, the description of boundaries would be treated by the granting officers as separated from the public domain and as not subject to further grant. Another consequence of this system of making grants would be, that the whole tract being severed from the public domain for the benefit of the applicant, he would be at liberty, in case there was an excess in the grant over the quantity of land specified, to make his selection, in reasonable form, from such parts of it as he preferred. That this was understood to be the right of the grantee has been proved in this case by two intelligent witnesses, one of whom had been an alcalde for several years, and another a Governor of the Territory. And such, as far as can be ascertained from cases which have come before the Board, appears to have been the uniform practice in California in giving judicial possession of the lands to grantees of the Government. If in the present case, the boundaries which are mentioned and described in the grant may be considered as those which should separate the land from the public domain, as we think they must, there can be no question but that they are sufficiently definite for that purpose. We have already seen that the grant remained in full force and validity during the continuance of the Mexican authority in California, and consequently the right of the grantee to select the quantity of ten leagues within the described land, which right was incident to the grant and a part of it, was in the grantee when the sovereignty of the country passed from Mexico to the United States. This right of selection being thus incident to the grant, and thus constituting a part of it, was properly protected by the Treaty, and might be well exercised afterwards.

We think it has been well and properly exercised, and that the objection ought not to prevail.

The only remaining objection that has been made to the confirmation of this claim is founded upon the facts appearing in the evidence, that mines of gold are found upon the land. It is not understood to be insisted that this fact furnishes a valid objection to the confirmation of the claim, but it is said, the confirmation should be made with a reservation of the right in the Government of the United States to the mines.

It was well known to Congress at the passage of the act of March 3d, 1851, constituting this commission, that there were large and extensive tracts of land in this State embracing mines of gold,

and that some portions of these lands were claimed under Mexican titles.

If it had been conceived that the Government of the United States had any interest in mining lands claimed by individuals, that needed the aid of the commissioners to protect, Congress would doubtless have made some provision for such protection, and its omission to do so furnishes a sufficient reason for our declining to interfere in the matter.

We are not, however, satisfied that the Government of the United States acquired by the Treaty any interest in the mines on the lands of individuals other than that incident to its power of sovereignty. The right of the Spanish crown on mines (and that of the Mexican Government is believed to have been the same), appears to have been rather a sovereign than a proprietary right. A percentage was claimed and exercised on the productions of mines, and where a mine was not worked by the owner of the land, the crown might permit it to be done by another, he making compensation to the owner for the actual injury to the soil and fixtures. (Mining Ordinances of 1783, chap. 6 and 7; Rockwell on Mines, 49, 144, 162, 407.) The former is the exercise of the taxing power, and the latter seems to be that of taxing private property for the general benefit of the public, and both may be properly embraced within the sovereign right of evident domain. Ward, in his work on Mexico, says, "That the King of Spain (individually) was not proprietor of a single mine," and that there is not one instance, since the conquest, of an attempt having been made by the Government to interfere with the mode of working by individuals, or to diminish the profits of the successful adventurer, by exacting, under any plea or pretence, from the more fortunate a higher rate of duties than that which was payable by the poorest miner into the royal treasury.

Whatever the theory may have been in regard to the ownership of mines by the Crown of Spain or the Government of Mexico, it seems very evident that practically the right was embraced within the general power of sovereignty, and was never treated as that of a proprietor. Such being the case, no proprietary right in mines on the lands of individuals would pass to the Government of the United States by the treaty of Mexico, and there being no reservation of mines in the grant in the present case, there was no interest in Mexico to be transferred to the United States.

For these reasons we do not think that the title of the claimant should be treated as subject to the reservation suggested by the Law Agent.

The extent and supposed value of the land claimed in this case has induced us to examine the various questions arising in it somewhat in detail. We are satisfied that the title papers presented in support of the claim are all genuine and authentic; that the grant was made as well in reward for services to the Mexican Government as to promote the general object of the Colonization Law, and if the

territory of California had not been transferred to the United States, we cannot doubt that the title would have been respected and maintained, and the grantee and those claiming by him secured and protected in its full enjoyment. On the whole we are of the opinion "that in accordance with the treaty of Guadaloupe Hidalgo, the Law of Nations, the laws, usages and customs of the Government from which the claim is derived, the principles of equity, and the decisions of the Supreme Court of the United States," the claim is valid and ought to be confirmed; and we accordingly now enter a decree of final confirmation. I am authorized to say that Commissioner Thornton concurs in the result.

(Signed,) HILAND HALL.

Claim No. 1. JOHN C. FREMONT, Claimant.

Decree of Final Confirmation.

This Board, upon full consideration of the various grounds affecting the validity of said claim, having come to the conclusion that the claim is valid, now proceed to make and does make the following decree or report of final confirmation, viz:—

It is decreed that the said claim be confirmed to the extent of ten square leagues, being the same land described in the grant and map filed in the office of the United States Surveyor General for California, November 21st, 1851, and of which map an official copy was used as evidence in this case, and the same land proved to have been possessed by the claimant. Provided, that the said quantity of ten square leagues now here confirmed to the claimant be continued within the boundaries called for in the said grant and map; and if there be less than the said above named quantity within the said bounds, then we confirm to the claimant that less quantity.

Given under our hands this 27th day of December, 1852.

(Signed,) HILAND HALL,
HARRY B. THORNTON,
Commissioners.

Filed in office January 10th, 1853.

(Sd.) GEO. FISHER,
Secretary.

Copy.

OFFICE OF THE BOARD OF COMMISSIONERS OF CALIFORNIA LAND CLAIMS.

SAMUEL D. KING, ESQ., *Surveyor General:*

SIR: There is pending before the Board of Commissioners, a petition of John Charles Fremont, being No. 1 on the docket of the Board, claiming a tract of land under a grant from Governor Manuel

Micheltorrena to Juan B. Alvarado, dated February 29th, 1844, which tract of land is called "Las Mariposas," and is described as follows: "to the extent of ten sitios de ganado mayor, between the boundaries of the Sierra Nevada, and the rivers known by the names of the Chanchiles, La Merced and San Joaquin."

Will you please inform the Board whether the Mexican archives in your office show such a grant was made, whether it was approved by the Territorial or Departmental Assembly, and when? whether the papers relating to said grant appear in all respects fair and genuine, and whether any particular circumstances have come to your knowledge, calculated to cast suspicion on the fairness and validity of their claim?

Very respect'ly, y'rs,

(Signed) GEO. FISHER,
Sect'y.

SURVEYOR GENERAL'S OFFICE,
San Francisco, March 13th, 1852.

To the Secretary of the Commissioners of California Land Claims:

SIR: In reply to your inquiry No. 5, I have the honor to state that there is among the archives an Espediente, No. 352, purporting to show that such a grant was made as is specified in your inquiry.

Said document does not show the approval of the Departmental Assembly.

The papers in that case appear to be fair and genuine; a map purporting to be of the tract of land claimed, was filed in the Archives by Col. J. C. Fremont, on the 20th of Nov. 1851, and filed with said Expediente.

Very respectfully, y'rs,

(Signed) SAMUEL D. KING,
Surveyor General.

Espediente promovido por el Sor Coronel de Milicias Auxiliaris, C. Juan B'ta Alvarado en solicitud del terreno nombrado "Las Mariposas."

Ano de 1844. (Numero 352.)

Sello Cuarto, Dos Reales.

Habilitado provisionalm'te por la Aduana Maritima del Puerto de Monterey en el Departam'to de las Californias para les anos de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cuvei.

MICHELTORRENA.

Pueblo de la Guerra.

[SELLO.]

Ec'smo Sor Gob'nor.

Monterey, 27 de Feb. 1844.

Jul el S. Srio del dispacho tomando otros si los necesita.

(Firmado) "MICHELTORRENA."

Juan B. Alvarado, Coronel de Milicia Auxilia de este departm'to a V. E. con el respito devido hage presenté que siendo actualmente proprietario (por compra que hiza) de una muy contá es lenam de terreno que no es sufficienté para manil enir los bienos de compo que en el se hallam sui peyudoci de las pricas igualmente establicidas y des eos de hacer, progressar estos contribuendo al mismo tienipe al fornento de al agricultura y industria del priro pido conforme a las leyes de Colonizacion de serra V. E. concedume de es sitios de ganado mayor al Norte del Rio de San Joaquin dentro de las terrenos de la Sierra Nevada del mismo rumhu el Rio del Chanchillas al Orienté de la Merced al pourerité y el mencionado de San Joaquin con el Nombre de Las Mariposas opeciendo a V. E. presentár el plano a deseiro correspedienté luego que con exactitud sea levantada no haciendato chora por la dificultad de ser mi campo desierto a la, inmediacion de las Indios salvajes y por que deser nise interposea por esta circumstancia ni pretencion.

P. F. de las intenciones buenas de V. E., en favor de los progresos del pais que Gobierno espeso elaisultado mas favorable si asi fuere de justicia en que recibiro gracia.

(Firmado) JUAN B. ALVARADO.

Rancho del Alizal, Feb. 23 *de* 1844.

Como dispone en el E. S. Gobernador pase la precidente instancia de Alcalde de 1st de Sn. José pa que se serra informir solire su contem'do.

(Firmado) MANUEL JIMENO.

Monterey, 26 *de Febr. de* 1844.

Sir Srio del Dispacho:

El terreno que pretende en es te instancia a Dn. Juan B. Alvarado, se hada entenemente baldio no pertenece a Pueblo v particular ni Corporacion alguna y cuo que por estas vazones como de la ser el solicitante acreedior por sus patrioticos servicios y recommendables circumstancias no hay miberazo en que se le conceda en la propriedad del terreno citado. Es cuanto tenga que informar V. E. en contestacion a su Supmo. Decreto que antecede cuyo paracen subjeto a la determinacion de V. E. que sera la mas ascertada.

Pueblo de San Jose Guadaloupe.

(Firmado) MARIA ANTONIO PICO.

Febrero 29 *de* 1844.

Exmo Sor Gobernador:

Segun al informe que en el Juez de San José y las que lo ha adquirido de los personas que conocen el terreno se vienen convanito que pues de conceder seal Sor que lo pretende a quien se le puede atender por las servicias qué ha prestado al Departmento el Superior discernimiento de V. E. disolvera lo que tubieri por conveniente.

(Firmado) MANUEL JIMENO.

Monterey, 29 *de Feb. de* 1844.

Monterey, Feb. 22 *de* 1844.

Es pedasele el titulo es presando es acreedor por sus patriot'cas serv'cios y por consiguienté di que de preferencia.

(Firmado) MICHELTORRENA.

Monterey, 29 *de Febrero de* 1844.

Visla la peticion con que da principio este espediente las informes que preceden y los servicios patrioticas de solicitante con todo lo demas que se titulo presente y ver convenio de conformidad de las leyes y reglain'tos de la materia declara a Dn. Juan Bautista Alvarado dueni de en propriedad del terreno conveido con el nombre de las Mariposas dentro de los terminos de la Sierra Nevada y las Rios llamados las Chanchillas la Merced y San Joaquin libc si el correspondiente despacho tome se razon en el libro respecto y duigase este espediente a la Exma. Assem'blea Depart'al para su aprobacion Manuel Micheltorrena, General d Brigada del Ejercito Mejicano Ayudante General de la plana Mayor del mismo Gobernador Commandante General y Inspector y Gete del Departamento de Californias.

Por cuanto Dn Juan B't Alvarado Coronel de Melicia auxilia de este Departmento se ha hecho acredor por sus patriot'cas serv'cios para que se ceatrenda de preferencia a la pretencion que hace para su beneficio personal y el de su familia de terreno conocido con el nombre de Las Mariposas en estencion de diez sitios de ganado mayor entre las terminos de la Sierra Nevada, Las Rios conocides al nombres de Chanchillas de la Merced y San Joaquin practicadas previamento los diligencias y avenguaciones concemientes segun lo dis puesto por leyes y reglamentos usando de las facultades que me son conferidas a nombre da la Nacion Mejicano he venido en concederle el terreno mencionado declarando de la propriedad de el por las presentes titras sugetandose a la aprotacion de la Exma Assembla Departmental y a las condiciones seguientes.

No podrar venderto enargenarno lo hy poticar lo sinponer censo vinculo ni otro gravamin algeo.

Podra circarlo sin perjudicar las travesias, caminos y servidumbres lo disfrutara libre y esclusivamente destinandolo al uso ocultiva quemas acomode pero deutro uno ano fabricara casa y esta habitada.

Solicitara del juez respetiro que el de posesion juridicar en virtud de este dispacho por el cual se le demarcaran los linderos enaryas limites pindon las magoniras correspondientes El terreno de se que hace donacion es de diez sitios de ganado mayor, conro se lleba referida el Juez que diere la posecion lo hara medir, conforme a ordinanza que dando al sohanto que resulte a la Nacion por los uso convenientes. Si contiabuneri a estas condiciones perdera su dipo al terreno y sera denunciable por atro.

En consecuenciamando que tencendose en firme y valedero el pre-

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(Firmado) MICHELTORRENA.

Monterey, 29 *de Febrero de* 1844.

Visla la peticion con que da principio este espediente las informes que preceden y los servicios patrioticas de solicitante con todo lo demas que se titulo presente y ver convenio de conformidad de las leyes y reglain'tos de la materia declara a Dn. Juan Bautista Alvarado dueni de en propriedad del terreno conveido con el nombre de las Mariposas dentro de los terminos de la Sierra Nevada y las Rios llamados las Chanchillas la Merced y San Joaquin libe si el correspondiente despacho tome se razon en el libro respecto y duigase este espediente a la Exma. Assem'blea Depart'al para su aprobacion Manuel Micheltorrena, General d Brigada del Ejercito Mejicano Ayudante General de la plana Mayor del mismo Gobernador Commandante General y Inspector y Gete del Departamento de Californias.

Por cuanto Dn Juan B't Alvarado Coronel de Melicia auxilia de este Departmento se ha hecho acredor por sus patriot'cas serv'cios para que se ceatrenda de preferencia a la pretencion que hace para su beneficio personal y el de su familia de terreno conocido con el nombre de Las Mariposas en estencion de diez sitios de ganado mayor entre las terminos de la Sierra Nevada, Las Rios conocides al nombres de Chanchillas de la Merced y San Joaquin practicadas previamento los diligencias y avenguaciones concemientes segun lo dis puesto por leyes y reglamentos usando de las facultades que me son conferidas a nombre da la Nacion Mejicano he venido en concederle el terreno mencionado declarando de la propriedad de el por las presentes titras sugetandose a la aprotacion de la Exma Assembla Departmental y a las condiciones seguientes.

No podrar venderto enargenarno lo hy poticar lo sinponer censo vinculo ni otro gravamin algeo.

Podra circarlo sin perjudicar las travesias, caminos y servidumbres lo disfrutara libre y esclusivamente destinandolo al uso ocultiva quemas acomode pero deutro uno ano fabricara casa y esta habitada.

Solicitara del juez respetiro que el de posesion juridicar en virtud de este dispacho por el cual se le demarcaran los linderos enaryas limites pindon las magoniras correspondientes El terreno de se que hace donacion es de diez sitios de ganado mayor, conro se lleba referida el Juez que diere la posecion lo hara medir, conforme a ordinanza que dando al sohanto que resulte a la Nacion por los uso convenientes. Si contiabuneri a estas condiciones perdera su dipo al terreno y sera denunciable por atro.

En consecuenciamando que tencendose en firme y valedero el pre-

sente, se tome razon en el libro respetiro entregandosele al interesado pr su resguardo y demas pres.

Dado en Monterey a los 29 deas del Mes de Febrero del ano de 1844.

(Firmado) MANUEL MICHELTORRENA.

(Firmado) MANUEL JIMENO, *Secretario.*

Quede tomada razon, de este despacho en el Libro Respetivo a fl'o 6, vert'a.

(Firmado) JIMENO.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, Surveyor General of the United States for California, and as such now having in my office, and under my charge and control, a portion of the archives of the former Spanish and Mexican Territory or Department of Upper California, do hereby certify that the nine preceding and hereunto annexed pages of tracing paper, numbered from one to nine inclusive, exhibit true and accurate copies of certain documents now on file, and forming a part of the said archives in my office.

In testimony whereof I have hereunto signed my name officially, and affixed my private seal (not having a seal of office) at the City of San Francisco, Cal., this 12th day of November, A. D. 1851.

(Signed) SAMUEL D. KING,
Sur. Gen. Cal.

Filed in office January 21st, 1852.

(Signed) GEO. FISHER, *Secretary.*

(For map see original, page 53.)

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, Surveyor General of the United States for the State of California, and as such now having in my office, and under my charge and custody, a portion of the archives of the former Spanish and Mexican Territory or Department of Upper California, do hereby certify that the preceding and hereunto annexed page of tracing paper exhibits a true and accurate copy of a certain document in my office as belonging to said archives.

In testimony whereof, I have hereunto signed my name officially, and affixed my private seal (not having a seal of office,) at the city of San Francisco, Cal., this 21st day of November, 1851.

(Signed) [SEAL.] SAMUEL D. KING,
Sur. Gen'l, Cal.

Filed in office Jan'y 21st, 1852.

(Signed) J. B. CARR,
Sec't'y.

Record of proceedings instituted by citizen Juan Bautista Alvarado, Colonel of the Auxiliary Militia, soliciting the tract of land called "Las Mariposas."

Anno 1844. (Number 352.)

To his Excellency the Governor:

I, Juan B. Alvarado, Colonel of the Auxiliary Militia of this Department, to your Excellency, with due respect, do represent, That being actually the owner (by purchase which I made) of a very small tract of land, which is not sufficient to support the cattle with which it is stocked, without injury to the estates likewise there established, and being desirous of increasing it at the same time to contribute to the spreading of the agriculture and industry of the country, I solicit Your Exc'lcy, according to the Colonization Laws, to be pleased to grant me ten sitios de ganado mayor (ten square leagues) of land, north of the river San Joaquin, within the limits of the Snow Mountain (Sierra Nevada), in the same direction the river Chanchilles, in the east part of the Merced, on the west, and the before mentioned San Joaquin, with the name of the Mariposas, offering to present to Y. E. the proper plan and draught thereof so soon as the same shall be made with exactness, not doing it at this time for the difficulty of being a wilderness country on the confines of the wild Indians, and because I desire that my claim for this cause may not be delayed.

Therefore, I hope from the good intentions of Y. E. in favor of the improvements of the country, the most favorable result if it be in justice, by which I will receive favor.

Rancho del Alizal, 23*d of February*, 1844.

(Signed) JUAN B. ALVARADO.

Monterey, 27*th of February*, 1844.

Let the Secretary of State report, and he may require such other reports as he may deem expedient, should he need them.

(Signed) MICHELTORRENA.

As directed by his Excellency, the Governor, let the preceding petitioner be referred to the First Alcalde of San Jose, that he may be pleased to report thereon.

Monterey, 26*th of February*, 1844.

(Signed) MANUEL JIMENO.

To the Secretary of State:

The land solicited in this petition by Don Juan B. Alvarado is entirely vacant; it does not belong to any individual, town, or corporation, and I believe that for these reasons, as well as that of the petitioner being meritorious for his patriotic services and commendable circumstances, there is no impediment for granting him the said

land in fee. This is all I have to report to your Honor in answer to your preceding superior order, which opinion I submit to the decision of your Honor, which will be the most proper one.

Town of San Jose, Gaudaloupe, Feb'y 29, 1844.

(Signed) ANTONIO M'A PICO.

To his Excellency the Governor:

According to the report of the Magistrate of San José, and the information I have acquired from persons who know the land, it is ascertained the same may be granted to the Petitioner, who may be favorably considered for the services which he has rendered to the Department. The superior judgment of Y. E. will decide the expediency.

Monterey, 29th of Feb'y, 1844.

(Signed) MANUEL JIMENO.

Monterey, 22d of Feb'y, 1844.

Let the title be issued expressing that he (the petitioner) is meritorious for his patriotic services, and consequently worthy of preference.

(Signed) MICHELTORRENA.

Monterey, 29th of Feb'y, 1844.

Having considered the petition which is at the beginning of this Record of Proceedings (Espediente), the preceding report, and the patriotic services of the petitioner, with everything worthy of consideration in the premises in conformity with the laws and regulations upon the subject, I declare Don Juan Bautista Alvarado owner in fee of the tract of land known by the name of "Las Mariposas," within the boundaries of the Snow Mountains (Sierra Nevada,) and the rivers called the Chanchilles, the Merced, and San Joaquin.

Let the proper patent be issued, let it be registered in the respective book, and let this record of proceedings be transmitted to the Most Excellent Departmental Assembly for its approval.

MANUEL MICHELTORRENA,

Brigadier General of the Mexican Army, Adjutant General of the Staff of the same, Governor and Commandant General of the Department of the Californias.

Whereas, Don Juan B. Alvarado, Colonel of the Auxiliary Militia of this Department, is worthy, for his patriotic services, to be preferred in his pretension for his personal benefit and that of his family, for the tract of land known by the name of the Mariposas, to the extent of ten square leagues (sitios de ganado mayor) within the limits of the Snow Mountain (Sierra Nevada), and the rivers known by the names of the Chanchilles, of the Merced and the San Joaquin, the necessary requirements, according to the provisions of the laws and regulations, having been previously complied

with, by virtue of the authority in me vested, in the name of the Mexican nation, I have granted to him the aforesaid tract, declaring the same by these presents his property in fee, subject to the approbation of the Most Excellent the Departmental Assembly, and to the following conditions:—

1st. He shall not sell, alienate, or mortgage the same, nor subject it to taxes, entail, or any other incumbrance.

2d. He may enclose it without obstructing the crossings, the roads, or the right of way; he shall enjoy the same freely and without hindrance, destining it to such use or cultivation as may most suit him; but he shall build a house within a year, and it shall be inhabited.

3d. He shall solicit, from the proper magistrate, the judicial possession of the same by virtue of this patent, by whom the boundaries shall be marked out, on the limits of which he (the grantee) shall place the proper landmarks.

4th. The tract of land granted is ten sitios de ganado mayor (ten square leagues) as before mentioned. The magistrate who may give the possession shall cause the same to be surveyed according to the ordinance, the surplus remaining to the nation for the proper uses.

5th. Should he violate these conditions, he will lose his right to the land, and it will be subject to being denounced by another.

Therefore I command that these presents being held firm and binding, that the same be registered in the proper book and delivered to the party interested for his security and other purposes.

Given in Monterey, this 29th day of the month of February, in the year of 1844.

MANL. MICHELTORRENA.

MANUEL JIMENO, *Secretary.*

This patent is registered in the proper book on the reverse of folio "6."

JIMENO.

I certify the foregoing to be a correct translation from the Spanish.

(Signed) GEO. FISHER,
Sec'y.

Filed in office January 21st, 1852.

(Signed) GEO. FISHER,
Sec'y.

Place of a Stamp on the Original.

Ano de 1844.

212. *Don Juan B. Alvarado, en 29 de Febrero de* 1844.

Se le div titulo del terreno llamado nombrado Las Mariposas en estencion de diez leguas de ganado mayor.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, Surveyor General of the United States for the State of California, and as such now having in my office and under my charge and custody a portion of the archives of the former Spanish and Mexican territory or Department of Upper California, do hereby certify that the above and foregoing are true and accurate extracts from a small and half-bound book, being a register of grants or titles, which is now on file and forms part of the said archives in this office.

In testimony whereof, I have hereunto set my hand and affixed my private seal (not having a seal of office), at the City of San Francisco, Cal., the 31st day of August, 1852.

(Signed) SAMUEL D. KING,
Sur. Gen. Cal.

Filed in office Sept. 17th, 1852.

(Signed) GEO. FISHER,
Sect'y.

Translation of the preceding Spanish text, numbered 212.

Year of 1844.

On the 29th of February, 1844, the grant of the tract called Las Mariposas was given to Juan B. Alvarado to the extent of ten square leagues (sitios de ganado mayor).

I certify the foregoing to be a true and correct translation of the preceding Spanish text, numbered "212."

(Signed) GEO. FISHER,
Sect'y.

Know all men by these presents, that I, John Charles Fremont, do hereby forever release and wholly acquit and discharge Juan B. Alvarado from all actions, suits, damages, and liabilities whatever, for and on account of all and any covenants, agreements, and liabilities contained in a certain act or conveyance executed to me by the said Alvarado, bearing date at Monterey on the 10th day of February, 1847, passed before Walter Colton, Chief Magistrate, by which said Alvarado sold and conveyed to me ten leagues of land called Las Mariposas, granted to said Alvarado by Manuel Micheltorrena, Governor, &c., in the year 1844, the object of this deed and release being wholly to discharge said Alvarado from all liability on account of any covenant or warrantee in said act of sale contained, and there-

by to render him a competent witness, but without in any other manner impeaching said act of sale.

In witness whereof, I have hereunto set my hand and seal, this 11th day of August, 1852.

(Signed) JOHN C. FREMONT,
By his Atty. J. C. PALMER.

Attest,
(Sd.) J. G. BROWN.

Filed in office Aug. 11th, 1852.

(Signed) GEO. FISHER,
Secty.

OFFICE OF THE BOARD OF COMMISSIONERS OF CALIFORNIA LAND CLAIMS.

San Francisco, Aug. 11th, 1852.

On this day before me, James Wilson, one of the Commissioners for ascertaining and settling the private land claims in the State of California, came Juan Alvarado, a witness produced in behalf of the claimant, John Charles Fremont, whose petition is No. 1 on the docket of the Board, and was duly sworn. His evidence being in Spanish, was interpreted by the Secretary of the Board. The Law Agent was duly notified and did attend.

In answer to interrogatories proposed by the counsel for the claimant, John C. Fremont, the witness answers as follows:—

Question. Look at the original paper now produced, of which a copy from the Archives is on file in this cause, and state if you are the grantee therein named?

Answer. I am the grantee therein named, and the grant annexed to this deposition, and marked "JW," is the original grant issued to me of the land therein named.

Question. Was that original grant made to you at the time it bears date?

Answer. It was, and delivered into my possession.

Question. How long did it remain in your possession?

Answer. Until I sold it to Col. Fremont.

Question. Where did you live at the time the grant was made to you, and what was your family?

Answer. I had a family of three children, and lived in Monterey.

Question. What offices did you then hold, and what other offices have you held in California prior to the conquest?

Answer. I was then Colonel of Militia, as stated in the title. At the age of seventeen, I was Chief Clerk of the Commissary Department, in 1825 or '6; afterwards, Secretary of the Territorial Deputation, in the year of '27 or '30; and afterwards, Senior Member and ex-officio President of the Territorial Deputation; afterwards, the principal Comptroller of the revenue; afterwards, Inspector of the Custom House at Monterey; afterwards, in 1837, Political Chief of

the territory; afterwards, in 1838, Governor of the Department of California and Colonel of Militia, and other offices. Held the office of Governor from 1838 to 1843.

Question. Who was Governor of California at the time the grant above mentioned was made to you?

Answer. Manuel Micheltorrena was Governor, and Manuel Jimeno was Secretary of the Department; Antonio M. Pico was alcalde of the District of San José.

Question. Do you know the handwriting of said Micheltorrena, and Jimeno, and Pico? If so, state whether the signatures to the original grant are in the handwriting of said Micheltorrena and Pico.

Answer. I know their signatures, and the signatures in the original grant are the signatures of said Micheltorrena and Pico.

Question. Look at the Espediente in this cause now produced from the archives, and state whether the original petition and signature thereto are in your handwriting, and whether the signatures of the said Micheltorrena and Jimeno, on the same, are genuine, and whether the signature of Antonio M. Pico to his report on the same is genuine, and whether you presented that petition at the time it bears date.

Answer. The petition is in my handwriting, the signature is mine, and the signatures of said Micheltorrena and Jimeno on the same are genuine; and the signature of said Pico to his report thereon is genuine, and said petition was presented by me at the time it bears date, and the original title above spoken of issued upon the said petition.

Question. State whether the paper on which said original grant was written, was the legal class of stamped paper at the time for grants of that kind.

Answer. This was the legal style of stamped or sealed paper, but under certain circumstances, grants might be made on paper of less value.

Question. State whether you, as Governor of California, made many grants of public land, and whether you were well acquainted when Governor with the form of granting public lands.

Answer. I made a great many grants of public lands when Governor, and was well acquainted with the law and usage in as to making such grants.

Question. State whether the above mentioned original grant to you was made in accordance with the laws and usages at that time in force in California.

Answer. It was.

Question. State what was the condition of the country where the land granted to you lies at the time of the grant, and whether it was then practicable to make a survey or plan of the land.

Answer. It was a deserted country or wilderness, and it would then have been impossible to have made a survey or plan of the

land without the protection of a sufficient military force, owing to the hostile Indians.

Question. From your knowledge of the laws and usages of granting public lands in California at the time of said grant, was it competent for the Governor to dispense with the survey or plan, where the making of a survey or plan was impracticable from hostile Indians or other causes, or could the Governor in such case make a valid grant without such plan or survey annexed to the petition?

Answer. By the customs and usages it was.

Question. What was the object of referring a petition for a grant of land to an Alcalde or other officer to report thereon, and what was the effect of such officer's report?

Answer. The object was to ascertain whether the land was vacant, and whether the grant could properly be made. The Governor could make the grant without any reference. The report was for the information of the Governor, and was not binding upon him.

Question. Was the original grant to you, above spoken of, in the form usually adopted by Governors of California, when it was intended to grant the land in full property?

Answer. This is one of the usual forms.

Question. You have stated that at the time the grant was made to you, it was impracticable to make a survey or plan of the land, owing to hostile Indians; state how long the country continued in that condition.

Answer. It was impossible for me to make a survey of the country until 1849, and then only from information.

Question. Look at the original plan of said land made and certified by you, and now produced from the archives, and state when it was made, and for what land it was made.

Answer. It was made in 1849; it was made of the Mariposas, and intended to represent the land granted to me. I cannot state what month of the year. I sent it to Col. Fremont in 1849.

Question. What was the reason did not get the grant approved by the Departmental Assembly?

Answer. No map had been made, and the Assembly held only short extraordinary sessions, and was removed to Los Angelos.

Question. Did you ever know of a grant of land in California, made by a Governor, deemed invalid because it had not been approved by the Departmental Assembly?

Answer. Never; the grant has never been deemed invalid for the want of the approval of the Departmental Assembly.

Question. Look upon the act of sale by you to Col. Fremont, now produced (heréto annexed marked "A,") and state whether you made the same at the time it bears date; and whether your signature thereto is genuine, and whether the same was passed before Walter Colton, a justice of the peace at Monterey, and whether said Colton then exercised the office of justice of peace or magistrate at Monterey, and whether his signature is genuine.

Answer. I did make the said act at the time it bears date; my signature thereto is genuine; the act was passed before Walter Colton, who then exercised the office of magistrate at Monterey, and his signature is genuine.

Question. What was the effect of the 1st condition attached to the original grant to you; and was such condition often inserted in grants of lands by California Governors; and if so, why was such condition inserted?

Answer. The condition had no effect; the Governor in inserting that condition had in view the preventing of monopolies by prohibiting parties from selling their lands and applying for more.

Question. When a grant was made for a certain quantity of land, so many leagues for instance, within certain boundaries, and the boundaries mentioned in the grant included more than the number of leagues granted, how was the selection made, and who had the option where the number of leagues granted should be located within the limits mentioned in the grant?

Answer. The government had no rules, the party chose the direction he preferred in locating his grant.

Cross-interrogatories propounded by the Law Agent.

Question. Under what circumstances, and under what law could grants of land be made upon paper of less value than that of the first class?

Answer. I do not recollect the provisions of the regulations.

Question. What usages do you refer to, when you say that the grant was made in accordance with the usages in force at the date of the grant?

Answer. I referred to the usage of the Governor at the time; the usage of the respective Governors was different in reference to the conditions of the grant; some inserted more, and some inserted less.

Question. What right had the Governor to make a grant without plan or survey being previously made and furnished, or to dispense with a plan, inasmuch as a plan or diseno was required, under the regulations of 1828?

Answer. I believe that each Governor had the power to grant lands without the plans being produced, as he had the power to modify the grant as he pleased.

Question. Under what circumstances could a Governor make a grant without a reference for information; and when and why was the report not binding upon him?

Answer. In those cases in which the Governor considered himself sufficiently informed. In no case was the report binding upon him, because the Governor might ask for it or not, as he pleased.

Question. Did the Governor ever insert the first condition con-

tained in this grant when he intended to grant full property or the ownership of the land?

Answer. Some Governors inserted the condition, notwithstanding they intended to give full ownership of the land, but others suppressed the condition.

Question. Who made the sketch in the plan contained, certified by you?

Answer. Don Antonio Pico, before mentioned, made the plan.

Question. Was it founded on a survey?

Answer. It was not founded on a survey; it was a mere sketch.

Question. At whose request was the sketch made?

Answer. My own request.

Question. Why did you seek for a sketch of the land after you had sold it?

Answer. Because Col. Fremont requested me to have the sketch made, and sent to him.

Question. Did he give you any reason why he wanted the sketch?

Answer. No, he gave me no reason.

Question. State where the sketch was made.

Answer. I believe it was made in San José.

Question. Why was the writing contained in two sheets of the Expediente, numbered 6 and 7, written upon common paper instead of sealed paper?

Answer. The original was written on stamped paper, but these were office copies, for which office copies stamped paper was not required.

Question. Are these not the originals?

Answer. They are copies.

Question. What was done with the originals?

Answer. The original of the grant went into my hands, the other paper was retained in the office. I do not know why the Secretary left it without the signature of the Governor. The copy of the decree contained on page "6" was usually signed by the Governor; why it was not in this case I do not know.

Question. How many times did the Assembly meet after this grant was dated?

Answer. I believe they had only one sitting after the date of this grant.

Question. Was any effort made by you to obtain the approval of the Assembly before the change of sovereignty?

Answer. I made no effort to obtain the approval of the Departmental Assembly.

Question. Was it not the duty of the Magistrate who gave the judicial possession, to determine the locality of the land?

Answer. The party presented his title to the Judge, and pointed out the place where he wanted it.

Question. Did you ever do anything in reference to taking possession and occupying the land?

Answer. I never took possession of any land, and made no effort to do so.

Subscribed and sworn before me.

(Signed) JUAN B. ALVARADO.

Aug. 11*th*, 1852.

JAMES WILSON,
Comm'r.

Filed in office Aug. 11th, 1852.

(Signed) GEO. FISHER,
Sec'ty.

Sello Primero Ocho Pesos.

Habilitado provisionalm'te por la Aduana Maritima de la Puerto de Monterey en el Departamento de los Californias para los annos de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

MICHELTORRENA.

Pablo de la Guerra.

[SELLO.] El ciudadano Manuel Micheltorrena, General de Brigada de Ejercito Mejicana Aynte G'ral de la plana mayor del mismo Gobernador Comand'te Gral y Ynspector del Departamento de los Californias.

Por cuanto Dn. Juan Bta. Alvarado, Coronel de la Milicia Auxilia de este Departamento se ha hecho acreedior por sus patrioticos servicios para que se le atienda de preferencia a la pretencion que hace para su beneficio personal y el de sus familias del terreno conicido con el nombre de las Mariposas en estension de diez sitios de ganado mayor entre los terminos de la Sierra Nevada y los Rios conocidos con el nombres de las Chanchillas de la Merced y San Joaquin practicados pariante las diligencias y ar enguaciones concernientes segun lo dispuesto por las leyes y reglamentos usando de las facultades que me son confendas a nombre de la Nacion Mejicana he senido concederle el terreno mencionado declarandole la propriedad de el por la presente eitras sugetandose a la approbacion de la Exm'a Assemblia Departamental y a las condiciones seguientes.

1. No podra rendulo enargenar lo ni hipoticarlo imponer censo rinculo in otro gravamen algano.

2. Podrar circarlo sin perjordicar las travesias caminias y serridumbres lo disputara libres y esclusisamente destinandolo al uso a cultivo que mas le acomode peu dentro uno ano fabricara casa y sera habitara.

3. Soliatara del Juez respectivo que le de posecion juridica en nortud de este dispacho por el cual se demarcaran los limitos en cuyas limites frondra las majoncras cones pondientes.

4. El terreno de se que hace donacion es de diez sitios de ganado mayor como se lleró referida. El juez que diere la posecion lo

hara medir conforme a ordenanza que dando el sobrante que resulte a la Nacion para los usas convenientes.

5. Si contrabruieri a estos condiciones perdera su derecho al terreno y sera denunciable par atio.

En consecuencia mando que teniendose por firme y valedero que presente se somo razon de el en libro respectivo entregandose le al interesado para su resguardo y demas fines.

Dado en Monterrey a las Veinte y Naevedias del Mes de Febrero del ano des mil ochocientos cuarenta y cuatro.

(Firmado) MANL. MICHELTORRENA.
(Firmado) MANL. JIMENO,
Srio.

Quede tomada razon de este Dispacho en el libro respectivo a f'o 6, y'ta.

(Firmado) JIMENO.

Filed in office, Aug. 11th, 1852.

(Signed) GEO. FISHER,
Sec'ty.

Translation.

The citizen Manuel Micheltorrena, Brigadier General of the Mexican Army, Adjutant General of the Staff of the same, Governor and Commandant General and Inspector of the Department of the Californias.

Whereas, Don Juan B. Alvarado, Colonel of the Auxiliary Militia of this Department, has deserved well for his services to the country in such manner as to entitle him to be preferred in the claim which he makes for his personal benefit and that of his family, for the tract of land known by the name of the Mariposas, to the extent of ten square leagues (sitios de ganado mayor, ranges for large cattle), between the boundaries of the Sierra Nevada and the rivers known by the names of the Chanchilles, La Merced and San Joaquin; having first taken the proper steps and information according to what is required by the laws and regulations, using the powers which are conferred on me, I have proceeded, in the name of the Mexican nation, to confer on him the said land, declaring it to be his property by these present letters, subject to the approbation of the Most Excellent Departmental Assembly, and to the following conditions:—

1st. He cannot sell, transfer or hypothecate it, nor impose any annuity, entail, or other burthen upon it.

2d. He may enclose it without prejudice to roads, paths, or other servitudes, and enjoy it freely and exclusively, appropriating to the use that may best suit him; but within one year he must build a house, and it must be inhabited.

3d. He shall apply to the proper magistrate to give him judicial possession in virtue of these proceedings or decree, by whom the

boundaries shall be demarked, putting at their limits the proper landmarks.

4th. The tract of which donation is made is of ten sitios, as already stated. The magistrate who shall give him possession shall cause it to be measured according to the ordinance, the overplus remaining to the good of the nation.

5th. If he shall violate these conditions, he shall lose his right to the land, and it may be denounced by another.

Wherefore I order that these presents being held firm and valid, account of it shall be taken in the proper book, this being delivered to the interested party for his security and other ends.

Given at Monterey, this 29th of February, 1844.

(Signed) MANUEL MICHELTORRENA.

(Signed) MANUEL JIMENO,
Sec'y.

Account is taken of this decree in the proper book at folio "6," and over.

(Signed) JIMENO.

A correct copy and translation.

(Signed) GEO. FISHER.

Filed in office Jan'y 21st, 1852.

(Signed) J. B. CARR,
Sec'y.

En el Puerto de Monterrey de la Alta California a las diez dias del Mes de Febrero del ano mil ochocientos cuarenta y siete ante me Walter Colton, Esq., Juez de Paz de este demarcacion y ante los testigos que subscribero comparecio Don Juan Bautista Alvarado y dijo que por se ya nombre de su Esposa Da. Martina Castro del Alvarado y demas herederas y sucesores y de quien de ellas huhero titulo, voz y fama en cualquiera maniera vende y da enventa publica y enegarcion perpetua y juro de heridad y para siempre jamas a Don Juan C. Fremont nu terreno que pertinece en propiedad por concesion que de el le hiza el Exmo Sor Comm'dte. General y Gobernardor del Departamento Don Manuel Micheltorrena confhaviente y miere de Febrero de ano ochocientos cuarenta y cuatro dicho terreno se llama "Las Mariposas tiene de estencion diez sitios de ganado mayor y esta situado entre los terminos de la Sierra Nevada y los Rios conocidos con el nombre de Chanchillas de la Merced y San Joaquin, declara el vendidor no tenerto eryamado ni empenado y que esta lilue de todo gravamen publico y como tal se lorende al comprador en el precio del tres mil pesos ($3,000) que tiene recibidos a su entera satisfacion que desde a hora se despriende y oporta del domino propriedad y cualquiera derecho que el asista al referido terreno renun-

ciandolo y trespasando lo en el comprador para que disponja de el como de casa propia, obligandase el otorgante a que esta renta le sera sierta segara y efectivo y que no le inquiltara in movera pleyto origano y que en todo se resultan algan reclamo que da obligado a resarcerle al comprador el referido titulo de concesion y a la observancia de todo dicho la obliga todos sus bienes presentes y futuros y con ellos si simete al piero y jurisdicion de los Sres Jaeces que de sus causas dilan conacer para que a su complemiento que competan y apremien como por sententia depentira consentida y paysada en autoridad de coza juzgada que por tal la reputa renunciando las leyes en el caso la favorezcan.

Y para que constan lo firmo conmigo y los dos testigos que subscribero.

(Firmado) JUAN BAUTISTA ALVARADO.
(Firmado) WALTER COLTON,
Chief Magistrate.
Testigo,
(Firmado) GULLO. ED. HARTNELL,
GILLAUME R. GARNER.

En die dicho Mes y ano comparecio igualmente ante mi y las ya mencionados testigos Donna Martina Castro de Alvarado Esposa de Don Juan Bautista Alvarado y dijo que en nombre suyo y de sus herederas y sucesores y dequien de ellas hubiese titulo, voz y fama y cualquiera maniera de por bien rendido el parage ante mencionado y que renuncia espontanea y voluntariamente todo derecho que el pudiera tener ella y susdichos herederas.

(Firmado) MARTINA CASTRO DE ALVARADO.
(Firmado) WALTER COLTON,
Chief Magistrate of Monterey.
Testigo,
(Firmado) GULLIERMO R. GARNER,
GULL'O. ED. HARTNELL.

The foregoing instrument was signed, sealed, and delivered in my office and before me, this tenth day of February, one thousand eight hundred and forty-seven.

(Signed) WALTER COLTON,
Chief Magistrate of Monterey.
(Signed) WILLIAM R. GARNER,
Sect'y.

Filed in office August 11th, 1852.

(Signed) GEO. FISHER,
Sect'y.

Translation.

In the port of Monterey of Upper California, on the tenth day of the month of February, in the year one thousand eight hundred and forty-seven, before me, Walter Colton, Justice of the Peace of this demarcation, and before the subscribing witnesses appeared Don Juan Bautista Alvarado, and says that for himself, and in the name

of his wife, Donna Martina Castro de Alvarado, and other heirs and successors, and whoever of them shall have title, voice, and repute in the matter, he sells and conveys in public sale and perpetual alienation by right of inheritance forever and ever to Don Juan Charles Fremont, a tract which belongs to him in ownership by concession, made to him by the Most Excel't. Senor Command't Gen'l and Governor of the Department, Don Manuel Micheltorrena, with date the 29th of February, 1844. Said tract is called "Las Mariposas;" it has an extent of ten sitios of ganado mayor, and is situated between the limits of the Sierra Nevada and the rivers known by the names of the Chanchilles, La Merced, and San Joaquin. The vendor declares that he has not alienated nor burthened it, and that it is free from every public burden, and as such he sells it to the purchaser in the price of three thousand dollars ($3000), which he has received to his entire satisfaction; that henceforth he may use it, and dispose of the dominion, ownership, and other whatever right may aid him in the tract, renouncing it and transferring it to the purchaser, that he may dispose of it as his own thing, the vendor obligating himself that this sale shall be certain, effective, and sure to him (the vendee), and that he will not disturb him nor institute a law-suit against him, and that in all cases, if there shall be any claim set up, he will be bound to indemnify him, the purchaser, for all damages and prejudices which may have been occasioned to him. To which effect he transfers, on this date, to the purchaser, the said title of concession, and to the observance of all the foregoing he binds himself, obligates all his property, present and future, and with them he submits himself to the laws and to the jurisdiction of the Judges who may have cognizance of his causes in order to compel him to its fulfilment, and oblige him, as if by final judgment admitted and passed on authority of a thing adjudged, renouncing the laws which might favor him in the premises.

(Signed) JUAN B. ALVARADO.
(Signed) WALTER COLTON,
Chief Magistrate.

Witnesses, WM. ED. HARTNELL,
WILLIAM R. GARNER.

On the same day, month, and year appeared also before me the said witnesses, Da. Martina Castro de Alvarado, wife of Dn. Juan Bta. Alvarado, and said, that in her name, and those of her heirs and successors, and whoever of them shall have title, voice, and repute in the matter, she gives for well sold the before mentioned place, and that she voluntarily and spontaneously renounced all rights which she and her said heirs may have to it.

(Signed) MARTINA CASTRO DE ALVARADO.
WALTER COLTON,
Chief Magistrate of Monterey.

Witnesses, WILLIAM R. GARNER,
WM. ED. HARTNELL.

OFFICE OF CALIFORNIA LAND COMMISSION.

Los Angelos, Sept. 27, 1852.

I certify the foregoing to be a true and correct translation of the original on file in this office, in case No. 1.

(Signed) GEO. FISHER,
Sect'y.

Filed in office, Sept. 18th, 1852.

(Signed) GEO. FISHER,
Sect'y.

OFFICE OF THE BOARD OF COMMISSIONERS ON CALIFORNIA LAND CLAIMS.

San Francisco, Aug 11*th*, 1852.

On this day, before me, James Wilson, one of the Commissioners for ascertaining and settling private land claims in the State of California, came Antonio Maria Pico, a witness produced in behalf of the claimant, John C. Fremont, whose petition is No. 1 on the docket of the Board, and was duly sworn.

The Law Agent of the U. S. was duly notified and attended.

Antonio M. Pico being duly sworn, in answer to interrogatories by claimant's counsel deposes and says as follows:—

I am a native, and have always lived in California: I am 42 years of age: I was first Alcalde of San Jose: I held that office in 1844–5–6: I was acquainted with the laws and customs of the Mexican Government as to granting public lands in California: I know of many grants of public lands, and have been concerned in them officially. Lands were granted by the Mexican Government, as well for the purposes of colonization as also by way of reward for public services. The form of the grant was substantially the same in both cases, but in the case of public services rendered, the applicant had preference. It was competent for the Mexican Government to grant lands without a diseno or plan being exhibited with the petition, when it was impracticable to make a plan owing to the land being situated in a desert country; in such case the Governor referred it to the Alcalde to report whether the land could be granted, and if he reported favorably the government could grant without the diseno being exhibited, directing the plan to be afterwards exhibited. A plan subsequently produced in conformity with the grant would have the same effect as if annexed to the petition in the first instance. In said case I know the land granted by Governor Manuel Micheltorrena; first knew the land in 1835; at the time the land was granted to Alvarado it was impossible to take a sketch, owing to the hostile Indians. The land continued in that condition until after the occupation of California by the Americans, and until 1849. I had been on the land granted to Alvarado before the grant. After the grant

in 1844, there was a regular session of the Departmental Assembly. It was always deemed valid from the time it emanated from the Governor. Where a grant was made by a Governor of a certain quantity of land, within specified limits, and those limits included a larger quantity of land, the grantee had the right to select the quantity granted to him anywhere within the limits, and to require possession. Accordingly when a party applied for land, and presented a diseno, the usage was to make a mere figurative sketch, representing the land asked for, but without any actual measurement, there being no surveyors in the country. I never knew an instance in which actual measurement of the land asked for, was made before the issuance of the title in full property. The title was considered complete when it emanated from the Governor, and the survey was made afterwards, but no further or other title issued; the possession was given in accordance with the title previously issued. The first condition in the grants against selling or charging the lands granted had no effect in law, and was merely inserted to prevent the grantee from selling to foreigners, but the condition was without effect. I have known sales by grantees sanctioned, notwithstanding such condition, by the government. The grantee had the right to sell, without the sanction of the government, notwithstanding such condition. There is no instance in which a sale has been held invalid on account of such condition. The petition of Alvarado for the land called Las Mariposas, was referred to me as first Alcalde of the District of San José, by the Governor for my report. The object of the reference was to ascertain if the land could be granted—that is, whether it was vacant or belonged to any town, individual or corporation. It was my duty on such reference to ascertain and report whether the reports stated in the petition were true. I did report upon the petition, in favor of the grant's being made. The Governor of California at the time of the grant, was Manuel Micheltorrena. Manuel Jimeno was Secretary of the Department. I know the signatures of Micheltorrena and Manuel Jimeno. In 1849 Alvarado requested me to make a diseno of the land granted to him by Micheltorrena, and I did so with the assistance of William Gulnack, an old resident in the country, and well acquainted with the land; he drew up the sketch under my superintendence, and I approved it from my own knewledge of the land. I sent the diseno to Mr. Fremont by the desire of Alvarado. That sketch represents the land granted by Micheltorrena by Alvarado, and known by the name of Las Mariposas. I first knew Col. Fremont in 1845. I believe that in 1849 Col. Fremont took possession of the land. I cannot remember the date. The grant to Alvarado was made in the usual form where land was granted in full property. The original petition being now produced from the archives, is with the orders of reference and the reports of witnesses thereon. Witness recognizes the same, and that it was made at the time it bears date, and further says that the signature of Micheltorrena and Jimeno, and his own thereon, are genuine. The diseno

made by me and Gulnack being also produced, I recognize it as an exact copy of said diseno.

Cross-interrogatories by the U. S. Law Agent.

In answer to cross-interrogatories by the Law Agent, the witness deposes and says:—

Grants were made for public services, both civil and military, of lands in any place where the Government thought proper. I know of no written law authorizing the grants of lands without the diseno; but the Governors did grant, notwithstanding the regulations of 1828, without a diseno, where one could not be made. The right of the grantee to elect within the limits of his grant, grew out of the custom of the country; then it was referred to the Alcalde to measure the land, and he and the party settled it, and the Government did not interfere. I have known sales notwithstanding the 1st condition of the grant, against selling or charging in instances which took place in my office of Alcalde in San Jose in the cases of Domingo Pevalta and Mariano Castro. Castro applied to the Governor, and the Governor authorized him to sell. I have seen the permission in writing. We made the sketch from our knowledge of the land without any actual survey. I know from Col. Fremont that he has put up buildings, and put cattle on the land.

(Signed) ANTONIO M'A PICO.

Aug. 14th, 1852.

Subscribed and sworn to before me.

(Signed) JAMES WILSON,
Commissioner.

Filed in office August 14th, 1852.

(Signed) GEO. FISHER,
Sec'y.

OFFICE OF THE BOARD OF COMMISSIONERS OF CALIFORNIA LAND CLAIMS.

Los Angelos, Sept. 13th, 1852.

On this day, before James Wilson, one of the Commissioners for ascertaining and settling the private land claims in California, came George W. Wright, a witness produced in behalf of the claimant, and was duly sworn, his evidence being given in the English, &c.

The following deposition was taken at the request of John C. Fremont, to be used in the above case:—

George W. Cooley, Esq., Law Agent of the United States, was present and did not object.

Witness says: His name is Geo. W. Wright, age thirty-six years, residence at San Francisco; is well acquainted with Col. John C. Fremont, claimant in this case, and knows the tract of land called

Las Mariposas, claimed by said Fremont, and was once lessee under said Fremont, which said lease, he, said Wright, assigned about a year ago, and has now no interest whatever in said claim. Said Wright was on said tract in the summer of 1849, and saw a company at work mining and getting out the rock; encamped with the company, and knows the fact that said company, from a conversation with their head man, were holding possession of said tract under the authority of said Fremont, and acknowledging his authority over and on a strip of said tract; said Wright has subsequently seen a number of buildings on said tract, owned by said Fremont, of which one is now occupied by Bradford Jones as a dwelling, as resident agent of said Fremont, and another is and has been for a long time occupied by Edward S. Stearns as a farm house, and having charge of cattle belonging to said Fremont on said tract, and knows that said Fremont has made extensive improvements on said tract, among which said improvements is a large corral; said Wright has seen some of the monuments of a survey made of said tract by a Mr. Preuss in 1849, and also a map of said survey as early as 1849; on looking at the map now produced from the Surveyor General's Office, witness says that it represents the said tract called Las Mariposas, and appears to correspond in the general outline with the map of said tract, made by said Preuss as aforesaid; said Wright knows that said tract is more than ten leagues from the sea-coast.

In answer to interrogatories propounded by Geo. W. Cooley, U. S. Law Agent—

Witness says: That he has no interest, present or contingent, in the result of the case; that he has no interest in the land claimed, and no expectation of advantage from a favorable result of the case, but that he hopes said Fremont will gain this cause.

Witness further states that he became lessee under said Fremont in 1850, of six hundred feet; that he, said Wright, first saw and was in buildings erected on said tract in the summer of 1851; that said buildings were a machine shop, his family private dwelling, built in 1850, the building at present occupied by his agent, and the farm house now occupied by Mr. Stearns, all within the tract now claimed by said Fremont; that he knows that there are extensive mines of gold within the limits of said Claim.

Sept. 13th, 1852. (Signed) GEO. W. WRIGHT.

Subscribed and sworn to before me.

(Signed) JAMES WILSON,
Commissioner.

Filed in office Sept. 13th, 1852.

(Signed) GEO. FISHER,
Secty.

No. 1. OFFICE OF THE BOARD OF CALIFORNIA LAND COMMISSIONERS, LOS ANGELOS, *Sept.* 13*th*, 1852.

On this day before me, James Wilson, one of the Commissioners for ascertaining and settling the private land claims in California, came Wm. Carey Jones, a witness produced in behalf of the claimant, John C. Fremont, whose petition is No. 1 on the docket of the Board, and was duly sworn, his evidence being given in the English tongue, etc.

The following deposition, taken at the request of John C. Fremont, to be used in his case aforesaid, Geo. W. Cooley, Esq., Law Agent, was present and did not object.

Witness says: That his name is Wm. Carey Jones, age 36 years; resides in the State of California; is intimately acquainted with John C. Fremont, claimant in this case; he acted as his counsel in a trial before a court martial in Washington City, in Decr. 1847, and January and February, 1848; said Fremont was arraigned on charges preferred by Brigadier General Kearney; he (said Jones) has seen the original order of arrest, signed by said General Kearney; said Fremont was brought to Washington City from California under orders from General Kearney, and put under arrest he believes at Fort Leavenworth and thence ordered to Washington City; said Fremont was detained in consequence of his trial and waiting for the acceptance of his resignation, subject to military orders, some time in August, 1848; said Fremont then left Washington City with the avowed purpose of coming to California to take possession of his Mariposas estate, purchased from said Alvarado: said Jones and Fremont lived in the same house together in Washington City during the time of his trial and detention there, when he, said Fremont, was in the habit of consulting with me in regard to his interests in California as well as other things, and constantly avowed his intention of proceeding to California as soon as he was at liberty to take possession of his property there. Said Fremont left Washington City with the intention of going to California by the overland route, and previous to leaving Washington City he engaged, to my knowledge, four or five men to go with him; said Jones knows that he proceeded by the said route from the fact of having received letters from him, written by him whilst on his said overland journey, and learned from letters received from him that he, said Fremont, engaged additional men at St. Louis to accompany him; said Jones understood from letters received from said Fremont and from common report, that about one half of the number of his party were frozen in the mountains and never reached their destination; said Jones understood that the survivors reached California in the month of July, 1849; he first knew several members of the party in California in September, 1849, on his first arrival in California; he there met with Col. Fremont and Mr. Preuss, whom he knew to have left Washington City with the said

Fremont for the said expedition to California; said Preuss was by occupation a surveyor and draftsman, and had accompanied said Fremont on several previous expeditions in the employment of the Topographical Department of the Government; when said Jones was in Monterey in September and the beginning of October, 1849, said Preuss exhibited to me on several occasions a map which he had made of the Mariposas tract, which map purported to be made from actual survey on the ground; said Jones knows that said Fremont has always claimed ownership of the claim; has had agents and workmen, and made leases of different parts of the land; said Jones returned from California to Washington City in the beginning of 1850; said Fremont arrived in Washington City as Senator elect from California soon after his, said Jones' arrival; he knows of his having executed leases to Aspinwall and other persons of portions of said tract, and of their having sent agents and workmen, miners and machinists, for working the same, in April, 1850; at the said time said Fremont solicited said Jones to return to California, for the purpose of attending to his interests in the State, and more particularly to that of the Mariposas; said Jones did return, having that as one of his prominent objects of return to California; said Fremont sent with said Jones a Mr. Heap, to go upon the tract as a resident agent; said Jones furnished said Heap, on his arrival in California in 1850, with money and supplies for the purpose of carrying out this object, and despatched said Heap to said tract; he still continued to supply said Heap during the summer and fall of 1850, and caused him to build a house upon said tract, with enclosures and other improvements, furnishing him with lumber, &c., and money, and paying the bills of the workmen; he also employed Hungarian gentlemen, Count Wass and two others, to make a reconnoissance of the whole of said tract, and executed about the same time a portion of said tract to Mr. Gregory Yale and others; said Fremont in the fall of 1850 sent out several agents and workmen to me, to be despatched to said tract, whom I furnished with means and despatched accordingly, and from whom I received constant reports and communications whilst at said tract; said Jones often received reports and communications from said Heap, also of his proceedings on said tract, all of which said Jones did as agent of said Fremont in the premises. Said Jones says that he has no interest in the result of the case, there being no stipulated fee, but such legal claim from said Fremont as may result from being employed in the premises; that he has no stipulation or agreement whatever on the subject.

Questions by Geo. W. Cooley, U. S. Law Agent.

In answer, witness says: In answer said Jones recollects the names of Mr. Preuss and Mr. Ducatel, of Baltimore, as among the persons engaged by said Fremont, at Washington City. Mr. Preuss

is now residing at Washington City; that Mr. Ducatel returned to the Atlantic States, his residence not known; that Mr. Preuss left California in the spring of 1850, and Mr. Ducatel in the spring of the present year, 1852. Said Jones recollects the names of Alex. Godey and Vincent Haller among those engaged by said Fremont, in Missouri; that on reflection he recollects that the persons last mentioned were engaged by said Fremont, in Washington City, to meet him at St. Louis, on the frontier, said persons having been with him on previous expeditions, and were with him at said city while on the said court martial. Said Jones believes that these said last named persons are now in California, and employed in the region of the Mariposas estate. Said Jones knows not where said Fremont was born, but has heard him speak of himself as a South Carolinian; that ever since he, said Jones, was acquainted with him, he, the said Fremont, was in the army of the United States; that he believes he was at an early age a teacher of mathematics in the navy, and employed in United States vessels of war, in distant expeditions; that he was employed by the Government on the expeditions of Mons. Nicolet, in exploring the Upper Mississippi; that he, said Fremont, entered the army while Joel Poinsett was Secretary of War. That he first became acquainted with said Fremont's family in Washington City, in 1845. That he, said Jones, believes that he, said Fremont, first came to California as an officer of the United States in the Topographical Department, and continued in this Department until appointed Lieut. Col. of Dragoons, in the service of the United States, in which service he continued until the summer of 1848; that he was never a citizen of the Mexican Republic, to his, said Jones' knowledge; that he, said Jones, believes that said Preuss' survey embraces the land intended to be covered by the claim of said Fremont; that he, said Jones, employed Count Wass in the summer of 1850; that he, said Jones, has never been on said tract; that he has repeatedly heard said Fremont say that there was extensive mines of gold on said tract now claimed by Col. Fremont. That he, said Jones, first heard from said Fremont, in the fall of 1849, that gold had been discovered on said tract, and subsequently it was supposed there were extensive mines on said tract.

Question. Have you ever heard any one say whether there was any other place within the limits of this tract called by the name of the "Mariposas?"

Answer. Witness has heard that there was a creek south of the limits of the tract, claimed within the general limits of the grant, which had been called the "Mariposas;" that this is simply a general recollection, and that he cannot identify the times or persons; that in the year of 1850 and 1851 he heard such reports, but not from persons or in circumstances calculated to make any impression on his mind; that he never heard such reports from said Fremont nor from Alvarado, and that he has made inquiries from old inhabitants

of the country, who have said that they have known of no other place by that name.

(Signed) WM. CAREY JONES.

Sept. 13, 1852.

Sworn to and subscribed before me.

(Signed) JAMES WILSON,
Comm'r.

Filed office, September 13th, 1852.

(Signed) GEO. FISHER, *Sect'y.*

I, George Fisher, Secretary of the Board of Commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing pages, numbered from to , both inclusive, to contain a full, true and accurate transcript from the journal of proceedings of said Board in case No. 1, John C. Fremont, for the place called "Las Mariposas." I further certify the foregoing pages, numbered from to , both inclusive, to contain a full, true and correct copy of the original depositions of witnesses and of the documentary evidence on file in this office in the said case.

In testimony whereof, I hereunto set my hand and affix my private seal (not having a seal of office), at San Francisco, California, this thirtieth day of May, 1853, A. D., and of the Independence of the United States of America the seventy-seventh.

[SEAL.] (Signed) GEO. FISHER,
Sec'y.

ATTORNEY GENERAL'S OFFICE,
Washington, D. C., 18th of August, 1853.

JOHN C. FREMONT
vs.
THE UNITED STATES.

You will please take notice that the appeal in the above case from the decision of the Commissioners to ascertain and settle the private land claims in the State of California to the District Court of the United States for the Northern District of California, will be prosecuted by the United States.

(Signed) C. CUSHING,
Attorney General U. S.

(Endorsed "Filed Sept. 20th, 1853.")

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA.

UNITED STATES, Appellants,
vs.
JOHN CHARLES FREMONT, Appellee.

John Charles Fremont, by his attorneys, make this his amended motion, and moves the court that the appeal herein be dismissed for these reasons:—

I. That said appeal has not been brought or perfected according to law in this:—

1st. That the Act of Congress, approved March 3d, 1851, entitled "An Act to ascertain and settle the Private Land Claims in California," provides a time and mode in which the decisions of the commission, by said act created, may be reviewed; the provisions of which act were duly accepted by the claimant, said John Charles Fremont, by the presentation and subsequent prosecution of his claim before the said commission, whereby he became entitled to all the benefits of said act of Congress; and that the decision of said commission in his favor should be a final confirmation of his said claim, unless proceedings for a review of the same were commenced and prosecuted in the time and manner prescribed by said act; and such proceedings have not been so commenced, and the time within which they might have been taken has elapsed.

2d. That in particulars not altered nor proposed to be altered by any subsequent act of Congress, said appeal has not been brought or perfected according to, and the proceedings herein are not in conformity with the provisions of said act of 3d March, 1851, or with law.

3d. That this appeal is in derogation of the rights of the claimant, secured to him by the treaty between the United States and Mexico, called the "Treaty of Guadaloupe Hidalgo," and proceedings thereunder.

4th. That it is in derogation of his rights under a compact with the United States, existing by said treaty, the said act of 3d March, 1851, enacted to carry into execution the said treaty, and the claimant's acceptance of the terms of said act.

5th. That by the operation of law, and the stipulations of said act of 3d March, 1851, enacted to carry into execution the said treaty, and the claimant's acceptance of the terms of said act, the decision of said commission in the case has become final in favor of said claimant, and is not open to review or appeal.

II. That the court has not jurisdiction of said appeal, Because—

1st. In order to any jurisdiction over a cognizance of the proceedings or decisions of said commission, it is required that a petition be presented to the court, and a copy thereof served on the adverse party, praying the said court to review the decision of said

commission; and the same has not been done, and the time within which it might have been done has elapsed.

2d. That there are no provisions lawfully established, by which the decision of said commission in this case can be brought within the jurisdiction of this court, or to prevent the ripening of the same into a decree of final confirmation, other than those set forth in said act of 3d of March, 1851; and said provisions have not been complied with.

3d. That the appeal has not been preceded, brought, or perfected by due process.

4th. That there are no provisions of law by which an appeal will lie from the decision of said commission herein.

5th. That this court has no appellate jurisdiction over the subject-matter of this appeal, nor are the parties properly brought before it.

6th. That the said commission is not a court established under the 1st and 2d Sections of the 3d Art. of the Constitution of the United States, the tenure of office of said commissioners not being good behaviour, but at the will of the President of the United States, and their jurisdiction special; and that the claimant has not consented to have his rights tried or heard other than by due course of law and the constitutional tribunals of the country, except by his acceptance of the terms of said act of 3d of March, 1851; and this appeal is not brought or perfected in accordance with said act, or his said consent, and he now protests against, and does not consent to the imposition of any new terms, or that this court shall take jurisdiction of any appeal herein.

7th. That the said act of 3d of March, 1851, is not a law enacted by Congress in its legislative or law-giving capacity, but is in the nature of a proposal made under its administration or fiduciary powers as custodian and agent for the disposition of the lands and other property of the U. S., according to the 4th article of the Constitution, the acceptance of which proposal by this claimant made the same a contract, in no respect differing from a like contract between individuals, and not to be varied from or departed from by either, without the consent of the other; and the appeal is not brought according to the terms of said proposition and contract; and this claimant, being one of the parties thereto, has not consented, and now protests against, and does not consent to any variance of, or departure from the same, nor to this court taking jurisdiction of this appeal.

8th. That the said Commission is not a part of the Judiciary of the United States established by Congress in its legislative or law-giving capacity, or by the government of the United States in its political or governmental capacity, but is a special tribunal established in pursuance of the administrative or fiduciary powers of Congress as custodian and agent of the lands and other property of the United States, and has no jurisdictions, and consequently no appeals

or other process can lie from except by consent, and no consent, expressed or implied, has been given to this appeal.

9th. That this court cannot have appellate jurisdiction from a tribunal constituted otherwise than according to sections 1 and 2 of *of* article 3d of the Constitution, except by consent, and such consent is not given in this case.

10th. That this court has no appellate jurisdiction under the Constitution and laws of the United States.

Wherefore said claimant prays that said appeal be dismissed, and that a decree or order of final confirmation of this said claim, with an order of survey of the same, be made according to the provisions of the said act, approved 3d of March, 1851.

By his Attorneys, JONES & STRODE,
Survivors of Jones, Tompkins & Strode.

(Endorsed "Filed Sept. 30, 1853.")

UNITED STATES DISTRICT COURT,
for the Northern District of California:

UNITED STATES
vs.
JOHN C. FREMONT.

And the said John C. Fremont, by his attorneys, protesting that the said John C. Fremont is not properly brought before this court, and that no jurisdiction can be had thereof or taken, moves that the attempted appeal be dismissed for the following reasons:—

1st. That it does not appear, is not averred that the said claim by John C. Fremont is within the territorial jurisdiction of this court, and that in fact it is not.

2nd. That the facts necessary to bring this case within the jurisdiction of this court are neither averred or proven, and in fact do not exist.

3d. That there is neither process, notice, or consent bringing this case before this court, or to make it necessary for the said John C. Fremont to appear or defend in the present proceedings.

4th. That this appeal is unauthorized by and contrary to law and in violation of the rights of the said John C. Fremont.

5th. That it does not appear, is not averred, nor otherwise shown that notice has been given according to the act of the 30th of August, 1852, of the intention of the United States to prosecute this so-called appeal, and that in default of such showing, even were all other proceedings herein regular and in conformity with law, this court cannot proceed.

6th. That it does not appear, nor is averred or otherwise shown that the Attorney-General of the United States has given notice of the intention of the United States to prosecute the appeal in this case within six months from the time of his receipt of the transcript

of the proceedings of the Commission to ascertain and settle private land claims in California; and without such showing, even were all other proceedings herein regular and according to law, this court cannot proceed.

7th. That the proceedings and decision of said Commission in the matter of the claim of said Fremont, are not certified or verified to this court in pursuance of law, or in a manner to authorize this court to take cognizance thereof or to proceed herein.

By his Att'ys, JONES & STRODE,
Survivors of Jones, Tompkins & Strode.

(Endorsed "Filed Oct. 26th, 1853.")

At a Special Term of the District Court of the United States of America for the Northern District of California, held at the Court House in the City of San Francisco on Thursday, the 27th day of October, in the year of our Lord one thousand eight hundred and fifty-three, present the Honorable Ogden Hoffman, Jr., District Judge.

THE UNITED STATES, Appellants,
vs.
JOHN C. FREMONT, Appellee.

On motion of counsel for appellee, ordered that this cause be postponed in order that appellee may have an opportunity to take further testimony.

(Endorsed) "Filed Oct. 27th, 1853."

Land Claim No. 1.

THE UNITED STATES
vs.
JOHN C. FREMONT.

Testimony de bene esse by consent, Oct. 28th, 1853.

Pearson B. Reading being called by appellee and sworn, says:—

I am acquainted with John C. Fremont, the appellee in this case; first saw him at Sutter's Fort in the Spring of 184 .

Question. Do you know of any settlement or attempted settlement of the tract called "Las Mariposas," in this State, by Col. Fremont? if so, when and where was it?

Answer. At the close of the war between the United States and Mexico, in June 1847, Col. Fremont was ordered home by General Kearney. At his camp, on Bear River, he gave me a power of att'y to act for him relative to forming a settlement on that tract. Willard Bozzle was engaged by him to make a settlement on said tract, and I was authorized by my power of attorney to furnish him means to purchase provisions and tools necessary for building, agricultural implements, and whatever he might require in making a settlement. I also delivered cattle and horses to Bozzle, from Mr. Shaddon's

charge, who was then living on the Cosumnes River. I also furnished him money on account of Col. Fremont, and did deliver the articles to him as before stated, with instructions to him to go immediately upon the Mariposas claim. I saw him leave for that claim, but I have never been on that claim. He left about June 1847; took the cattle with him. He took his family with him.

Question. What do you know of his remaining upon the place or leaving it; the reasons of it, and from what sources of information?

Answer. I know nothing except what Mr. Bozzle told me.

(Any further testimony from that source objected to by the U. S. District Attorney.)

Witness says: He afterwards informed me of his having gone upon the Mariposas tract, made improvements, and that he took the stock delivered to him by me, on to the place, and was at that time, either late in the next Fall, 1847, or Spring of 1848, residing with his family upon the said tract, and from the hostility of the Indians he felt great uncertainty both of life and property.

Question. Please state the political condition of the country from the Fall of 1844 to the close of the war in 1847, as to the security of settlers.

Answer. In the Fall of 1844, the Californians revolted against General Micheltorrena. He met the former in force, I think, in November 1844, near to the Pueblo of San José; there they capitulated shortly afterwards. Micheltorrena withdrew his forces to Monterey, the then capital of the State; a correspondence then ensued between Genl. Micheltorrena and Capt. Sutter, requiring of Capt. Sutter, and in his behalf, to sustain himself against the revolting Californians. Considerable excitement at that time prevailed in the Sacramento valley, and the foreigners determined to espouse the cause of General Micheltorrena, and collected together at Sutter's Fort, at the call of Capt. Sutter, in December, 1844. Micheltorrena was then civil and military Governor of California. Castro was the leader of the opposite forces. Capt. Sutter marched to the aid of Genl. Micheltorrena, and was defeated by the revolutionists at the field of Coharga in the Spring of 1845, capitulated, and was obliged to leave the country.

During the period of which I have spoken, we were in a constant state of turmoil and confusion, conflicts of arms, which caused a feeling of insecurity among the foreigners, who kept mostly together at Sutter's Fort, our head-quarters. The Indians became less peaceably inclined, siding at first the Northern Indians with General Micheltorrena, were engaged in the battle of Cohanga. A constant suspicion of jealousy existed during the year from the battle of Cohanga until the Spring of 1846, although there was no actual fighting except with the Indian tribes, who, during the years of 1845 and '6, were constantly committing depredations, murdering, thieving, &c. &c.

The revolution named had a tendency to destroy the favorable control which had been exerted by Capt. Sutter over a large extent of country inhabited by the Indians. My remarks refer chiefly to the Northern Indians. I was engaged in a fight with them in 1846, in which they used guns, which they had never before used in their fights with the Americans.

I know from general report, that the Mariposas, Stanislaus and Mercedes Indians were plundering, stealing horses, and committing murders during the years 1843 to 1847, in the neighborhood of San José, Santa Clara, and the Spanish settlements generally.

Question. Do you think Gov. Alvarado could have occupied the tract known as the Mariposas previous to 1847?

Answer. I think he would have needed some force to sustain himself there; 15 or 20 men would have been sufficient; they would have required to have been armed and equipped, and to do military duty, and should have been good mounted men and foreigners; of Mexicans I think he would have needed 150 or 200 men.

Question. What was the extent of the country over which Genl. Sutter exerted the influence of which you spoke?

Answer. To the south as far as the Stanislaus River, I think not farther, and that it did not include the Mariposas Indians, the latter having always been committing depredations as stated since my first knowledge of them.

The Indians generally throughout California were less tractable and committed more depredations after the spring of 1844, and became bolder in their hostilities.

Cross-examined by the U. S. District Attorney, witness says:—

Question. State who were the opposing parties in the revolution of which you have spoken.

Answer. General Micheltorrena headed the Government forces and Genl. José Castro those of the revolutionists. Juan de Alvarado, the grantee of the Mariposas tract, originally belonged to the Castro party, which were victorious at the battle of Coharga, and remained in possession of the country after that battle, and were afterwards sustained and recognized by the Central Government.

The general belief with many of us was that the General Government acquiesced to the authority of Castro from necessity. In the commencement of the revolution up to the battle of Cohango, Genl. Micheltorrena was sustained by troops from the Central Government.

I do not know of my own knowledge that Juan B. Alvarado joined the forces of Castro, but as a matter of current history I do know it. (Objected to.)

(The last statement objected to by counsel for appellee.)

(Signed) P. B. READING.

(Endorsed "Filed Oct. 28th, 1853.")

U. S. COMMISSIONER'S OFFICE.

THE UNITED STATES vs. JOHN C. FREMONT. } Land Claim No. 1.

Testimony by Consent.

J. J. Warner being sworn says: I have resided in California 22 years; I know the location of the tract called Las Mariposas; was on it in the winter of 1832 and '33; have crossed it twice.

Question. State from your knowledge of the political condition of the country from the spring of 1844 to 1847, whether in your opinion it would have been safe for Genl. Alvarado to have resided on or occupied the Mariposas tract.

Answer. I think it would have been impossible to have occupied it unless assisted by a military force.

Question. State the effect of the civil war and the war between the United States and Mexico upon that section.

Answer. A military force was established by Micheltorrena in 1843 or early in 1844 upon the waters of the San Joaquin River, under the command of Genl. José Castro, the principal object of which was to protect that section of country from the hostilities of the Indian tribes, to allow of its settlement and occupation under the Mexican Government; in consequence of the revolution referred to, that fort was broken up in November, or thereabouts, in 1844; in the prosecution of the civil war of 1844 and '5, Genl. Micheltorrena brought into the field a large number of Indian allies to act against the native Californians, the consequence of which was a more hostile state of feeling and action from the Indians to the native Californians throughout the country, and a feud on the part of the native Californians against the Indians.

Question. State if you know anything of the customs and usages of the Governors of California in granting further time in cases of grants of land, for the settlement and occupation of lands in consequence of Indian hostilities.

Answer. I know that it was customary so to do, and that the petition of "*denouncers*" was frequently refused, on the showing by previous grantees that they had been unable to occupy the grant from the hostility of the Indians, and further time was granted them to comply.

Question. How many leagues of land do you think is contained in the tract called "Las Mariposas?"

Answer. I have no idea whatever, when I was there no tract of country being known by the name of "Mariposas Tract;" I simply knew the stream called "Mariposas" about the foot of the mountains and a short distance from the plain; have never examined a map of that tract; was better acquainted with the Indians than the land; in '32 and '33 the Indians appeared friendly, but it would not

then be safe for a person to have settled among them, in my opinion; nor were a party of trappers; I know that a little lower down on the Calaveras River the Indians were at that time hostile.

I think there was not so much danger to be apprehended from open and declared hostility of the Indians as from sudden treachery and outbreaks.

Question. State some instances of denouncers having failed to sustain their denouncements on the ground of Indian hostilities.

Answer. I do not know that I can specify any particular case at this time, but well recollect that during my residence in Los Angelos they did occur and were of general knowledge.

Question. Can you specify a case in which the Governor of California ever extended the time of occupation on account of Indian hostilities?

Answer. I believe it was so extended in the case of the Rancho of San Felipe; the extension was given somewhere, I think, about 1842, by the authority, I think, of the Governor through the Prefect.

Question. Who was the Prefect?

Answer. I do not recollect.

Question. Do you know of your own knowledge that the papers had any authority of the Governor?

Answer. I do not.

Question. Can you specify any other case of an extension?

Answer. I cannot.

(Signed) J. J. WARNER.

(Endorsed "Filed Oct. 28th, 1853.")

UNITED STATES OF AMERICA,
Northern District of California, ss:

I, Henry B. Jones, a Commissioner duly appointed by the District Court of the United States for the Northern District of California, under and by virtue of the Acts of Congress entitled "An Act for the more convenient taking of affidavits and bail in civil cases depending in the Courts of the United States," passed March 1st, 1817, and the act entitled "An Act to establish the Judicial Courts of the United States," passed Sept. 24th, 1789, do hereby certify that the reason for taking the foregoing depositions is and the fact is, the witnesses were material and necessary in the cause in the caption of the said deposition named, and that the same were taken by consent of parties without affidavit and notice.

I further certify that on the 28th day of October, in the year of our Lord one thousand eight hundred and fifty-three, I was attended by Volney Howard, Esq., counsel for appellee, and S. W. Inge, Esq., U. S. District Attorney, and by the witnesses, who were of sound mind and of lawful age, and the witnesses were by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions were by

me reduced to writing in the presence of the witnesses, and from their statements, and after reading carefully the same to the witnesses who subscribed the same in my presence, I have retained the said depositions in my possession for the purpose of returning the same with my own hand for the purpose of returning to the court for which the same were taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said depositions and caption named, nor in any interested in the event of the cause in the said caption named.

In testimony whereof, I have hereunto set my hand and seal this 28th day of October, in the year of our Lord one thousand eight hundred and fifty-three, and of the Independence of the United States the seventy-eighth.

(Signed) HENRY B. JONES,
U. S. Commissioner,

Duly appointed by the District Court of the United States for the Northern District of California.

U. S. COMMISSIONER'S OFFICE.
Land Claim No. 1.

THE UNITED STATES vs. JOHN C. FREMONT. } Testimony by consent, Nov. 10th, 1853.

M. G. Vallejo, being duly sworn and cautioned, says in answer to

Question 1. State whether you are a native of California, and in what capacity you have served the Mexican Government.

Answer. I am a native of California. I joined the Mexican army in 1824 as a cadet; served on the frontier from 1824 to 1846.

Question 2. Do you know the tract of land called Las Mariposas, and have you been upon it, and when?

Answer. I do, and have been upon it, first in 1828; have been upon it since at different times, last in 1831. "Las Mariposas" is situated between the Chanchilles waters and the Merced river; there are springs near the middle between these two waters, and a stream of water called Las Mariposas.

Question 3. Where does the stream called Las Mariposas empty?

Answer. It runs towards the San Joaquin river, I think it empties there.

Question 4. Where does the stream rise?

Answer. It rises in the first hills of the Sierra Nevada Mountains.

Question 5. Where does the Merced river empty?

Answer. In the San Joaquin also.

Question 6. What quantity of land do you estimate lies on the banks of the Mariposas stream, and within the valley of that river?

Answer. The river commences between the hills, and near its

source the valley is one mile wide; as the river progresses the valley is of different widths, from 200 and 300 to 500 yards.

Question 7. State where the Chanchilles empties.

Answer. It runs south of the Mariposas, and without any regular outlet spreads itself over the Tulare valley and is lost in it.

Question 8. State how wide the tract called Las Mariposas is on the side next the Sierra Nevada Mountains.

Answer. We call the whole country lying between the Chanchilles and the Merced rivers, "Las Mariposas," and also the stream running through it. The tract called particularly Las Mariposas is on the side next to the Sierra Nevada four or five miles wide.

Question 9. State what you understand by the particular tract called Las Mariposas, granted to Alvarado, if you know it.

Answer. I understand it to be on the Mariposas creek.

Question 10. State what you know of the Indian hostilities in that vicinity.

Answer. The Indians there were always very hostile toward the whites. In 1829 I was sent there at the head of an expedition against them, encamped on the Mariposas. They remained hostile after that until 1846, all the time. I have frequently received orders to send troops there.

Question 11. Do you think any man could have lived on that tract without the protection of a military force previous to 1848?

Answer. I think not very easily.

Question 12. Can you state what was the practice of the Governors of California as to granting extension of time to the parties to take possession and cultivate, on account of Indian hostilities?

Answer. In several instances the Indians killed the white settlers; then the Governor always put them back in possession, and granted further time to comply with the conditions of settlement; and if the grantee was prevented by Indians from taking possession, whether he made an application or not, further time was granted.

Cross-examined.

Question 13. What is the extent of the tract called "Las Mariposas," by leagues; north and south, east and west.

Answer. The whole country is called Las Mariposas; beginning at the creek of that name, and extending to the Chanchilles river, is about 15 to 20 miles; and an equal distance north to the Merced river, and from the source of Mariposas creek to the San Joaquin river 20 to 25 miles.

Question 14. What number of square leagues do you estimate the country called Las Mariposas to contain?

Answer. About thirty square leagues.

Question 15. Do you know of any particular and smaller tract included within the general boundaries named, called "Las Mariposas?"

Answer. I do.

Question 16. Describe that particular and smaller tract.

Answer. The whole country in the neighborhood of the Mariposas creek, north and south, east and west, on both sides.

Question 17. What are the boundaries of this smaller tract?

Answer. That must depend upon the quantity of land you wanted to include.

Question 18. Has this smaller tract any natural boundaries apparent to the eye?

Answer. The whole Mariposas tract is very plain; there is the Mariposas creek down to the San Joaquin river and back to the Mountains on either side, and the valley of the creek down. I encamped by the spring at the foot of the hills; from that point you see the slope of the Mountains on either side, and the valley of the creek down to the San Joaquin river and the timber on the creek.

Question 19. Do you know the particular tract of land granted to Alvarado in this case?

Answer. I do.

Question. How do you separate the tract of land granted to Alvarado from the great body of the Mariposas tract?

Answer. Because Alvarado applied for the Mariposas Creek, and I understand it was given to him.

(Objected to as not responsive to the question by the U. S. Dist. Att'y.)

Question 21. Can you give the exact boundaries of the tract granted to Alvarado?

Answer. I cannot.

Question 22. Do you know anything of the grant to Alvarado, except from hearsay?

Answer. I do; I have seen the grant from the Governor.

Question 23. Who had the grant when you saw it, and where was it?

Answer. Alvarado; it was in Monterey, and I believe in 1845.

Question 24. How did you know it to be a genuine grant?

Answer. Micheltorrena, the Governor, told me it was genuine.

(Signed) M. G. VALLEJO.

(Endorsed "Filed Nov. 11th, 1853.")

U. S. COMMISSIONER'S OFFICE.

THE UNITED STATES vs. JOHN C. FREMONT. } Land Claim No. 1.

Jacob P. Leese being called by appellee, and duly sworn, says, in answer to

Question 1. What was the usage as to granting extension of time, and whether you are a resident of California, and what office you have held?

Answer. I held office as Alcalde of Sonoma in 1844 and '5; I

only knew the usages of the Governor from hearsay; have heard that such was the usage, and have so understood it.

Question 2. State what was the nature of the hostilities against Micheltorrena in California in 1845 and '4.

Answer. The commencement was the class of people he brought with him, soldiers from Mexico, who committed robberies in Monterey, stealing the furniture of houses, &c., and their generally disorderly conduct. The war was against the soldiers, against Micheltorrena, and not against him personally, at first. Micheltorrena agreed with Alvarado and Castro to send his, Micheltorrena's troops out of the country in 90 days; before that time expired it was ascertained that he did not intend to do so, and then hostilities commenced against him, which resulted in his defeat in the battle of Cohanga, and his leaving the country. He was succeeded by Pio Pico as Governor, whose Government was recognized by the Supreme Government of Mexico.

Cross-examined.

Question. To which party did Alvarado belong in the revolution against Micheltorrena?

Answer. To Castro's party; the party of the people of the country.

Question. Who was the regular Governor of the country at that time?

Answer. Micheltorrena, the Commander-in-Chief and Representative of the Supreme Government of Mexico.

Question. How did you learn the facts of the commencement of hostilities?

Answer. I was in Monterey at the time, and heard them from public rumor.

Question. How did you learn about the agreement you spoke of, between Micheltorrena and Alvarado and Castro?

Answer. I learned it from Alvarado and Castro.

(Signed) J. P. LEESE.

(Endorsed "Filed Nov. 11th, 1853.")

UNITED STATES OF AMERICA,
Northern District of California:

I, Henry B. Jane, a commissioner duly appointed by the District Court of the United States for the Northern District of California, under and by virtue of the Acts of Congress entitled "An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States," passed March 1st, 1817, and the act entitled "An Act to establish the Judicial Courts of the United States," passed Sept. 24th, 1829, do hereby certify that the reason for taking the foregoing depositions is and the fact is,

the witnesses were material and necessary in the cause in the caption of the said deposition named, and that the same were taken by consent of parties.

I further certify that on the 10th day of November, in the year of our Lord one thousand eight hundred and fifty-three, I was attended by S. W. Inge, Esq., U. S. Dist. Att'y, and V. E. Howard, Esq., Counsel for appellee, and by the witnesses, who were of sound mind and lawful age; and the witnesses being by me first carefully examined, and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions were by me reduced to writing in the presence of the witnesses, and from their statements, and after carefully reading the same to the witnesses who subscribed the same in my presence, I have retained the said depositions in my presence for the purpose of returning the same, with my own hand, to the court for which the same were taken.

And I do further certify, That I am not of counsel nor attorney for either of the parties in the said depositions named, nor in any way interested in the event of the cause in said caption named.

In testimony whereof, I have hereunto set my hand and seal, this 11th day of November, in the year of our Lord one thousand eight hundred and fifty-three, and of the Independence of the United States of America the seventy-eighth.

[L. S.] (Sd.) HENRY B. JANES,
U. S. Commissioner,

Duly appointed by the District Court of the United States for the Northern District of California.

At a special term of the District Court of the United States for the Northern District of California, held at the Court House in the City of San Francisco on Monday, the 21st day of November, in the year of our Lord one thousand eight hundred and fifty-three—

Present—The Honorable Ogden Hoffman, Jr., District Judge.

THE UNITED STATES, Appellants,
vs.
JOHN C. FREMONT, Appellee.

On motion of counsel for appellee, ordered that a "certiorari" issue to Geo. W. Fisher, Secretary of the Board of Land Commissioners to ascertain and settle the private land claims in the State of California, commanding him to transmit to this court forthwith the field notes and survey ordered by the Board of Commissioners, and read in evidence in the above cause, if the same are in his office or keeping.

(Endorsed) "Filed Nov. 21st, 1853."

UNITED STATES DISTRICT COURT,
for the District of California:

UNITED STATES
vs.
JOHN C. FREMONT, Appellee. } On appeal from the United States Board of Land Commissioners.

Now comes the said John C. Fremont, by his attorney, and suggests a diminution of the record in this, to wit: the field notes and survey in this case, ordered by the court below, which survey was made under the authority of said Board and the Surveyor General of the United States for the State of California, and read in evidence in the trial of this cause in the court below, had not been certified in the record or sent up in the same by the Secretary of said Board, all of which will appear by the said record and the certificates herewith filed. The appellee therefore moves the court for a writ of "certiorari," directed to the Secretary of said Board, commanding him to certify said survey to this court and to send up a more perfect record.

V. E. HOWARD,
for Appellee.

(Endorsed)

Land Claim No. 1.

"UNITED STATES
vs.
JOHN C. FREMONT. } Suggestion of Diminution of Record."

"HOWARD."

"Filed November 21st, 1853."

In the case of the claim of John C. Fremont, for the tract of land called Las Mariposas, a preliminary survey, under the direction of the United States Surveyor General for California, was ordered by the Board of Land Commissioners, and a copy of the field notes of such survey, certified by the Surveyor General, under date of August 6, 1852, and also a map of the land certified by said Surveyor General, Aug. 5th, 1852, were returned to the Board as having been made under said order, the acting Deputy Surveyor General having been A. W. Von Schmidt. These papers were before the Board upon the hearing of the case, and were considered by me in evidence in deciding the case.

(Signed) HILAND HALL,
late Commissioner.

(Endorsed) "Filed Nov. 21st, 1853."

No. 1. Mariposas.

The survey by the U. S. Surveyor for California was made by the order of the Board, and was returned with the plat and field notes;

it was used before the Board on the trial and commented upon by the U. S. Law Agent and the counsel for the claimant. If it has not been incorporated into the record, I presume it was from the casual omission of the Att'y of the Board in giving directions to the Secretary as to the making out the transcript, which the law requires the Board to cause to be made out. I cannot see for what purpose the survey was ordered, except to be used as evidence, and being used as such, it ought to be a part of the case in receiving the decision as much as any other testimony.

(Signed) H. J. THORNTON.

(Endorsed) "Filed Nov. 21st, 1853."

U. S. COMMISSIONER'S OFFICE.

THE UNITED STATES }
vs.
JOHN C. FREMONT. }

Testimony by Consent. November 23d, 1853.

Willard Bussell, being duly called by Appellee and duly sworn, says in answer to

Question. State how long you have resided in California, and if you know the tract of land called Las Mariposas, and if John C. Fremont employed you to take possession of it, what acts were done by you therein.

Answer. I have resided in California eleven years; I know the tract of land called Las Mariposas; Col. Fremont employed me to take possession of it in the spring of 1847, furnished me with provisions and farming utensils here in this city; I went with my family as far as the Cosumnes River; there I left my family and went out to the place in company with another man; I cut some timber there with the intention of building a house and corral, but the Indians were so hostile I was afraid to remain; one of the chiefs having a certificate from Col. Fremont that he was peaceable and well-disposed towards the Americans, told me that the Indians on the opposite side of the river would kill me if they found me there, and advised me to leave; this chief was living on the land near the mountains, and on the Mariposas River, he had a small hut such as is usual with the Indians; he also had corn and other vegetables under cultivation; he showed me the certificate from Col. Fremont.

I visited the "Mariposas" twice during the following summer with the intention of settling there, but was prevented from so doing by the hostility of the Indians; I could not raise a force sufficient to enable me to take possession; it was not safe to live there with less than ten or fifteen men.

When the emigration came in, in the fall, I took some of the men with me to examine the place; they concluded that it was unsafe to remain there, and came on down to the settlements; then I aban-

doned the effort to take possession of the tract, because it was not safe on account of the Indians. I first saw a house on the tract in the spring of 1851, there were several houses there then; I think the first settlement there by Fremont was made in 1849; I think so because I then saw him in Stockton, engaged in packing out provisions and goods, and he told me that they were destined for this place (Mariposas). In 1851 I saw four or five houses there, with garden, &c. &c.

After 1846, until 1849 or '50, it was unsafe for less than four or five men to travel there, much less to settle there; I think it would have been more unsafe before 1844 than after that time, and at any time for less than ten or fifteen to settle there.

(Map attached to transcript being shown to witness) he says:—

The map does not look natural to me, but from memory I can describe the point where I attempted to settle; at first it was on the Mariposas River, just below the falls, where are the first foot hills of the mountains; afterwards I went further down, thinking it ought to be more safe. Col. Fremont first applied to me in 1846 to take possession of this tract in the fall of 1846, but we made no agreement until the spring of 1847.

I understood the tract called "Las Mariposas" to extend from the foot hills of the mountains to the San Joaquin River; I understood this from Fremont and from everybody.

(Objected to.)

Cross-examined.

Question. During the various times you were on this tract of land did the Indians make any attack upon you?

Answer. Not then, but I have fought them this side of there on the Stanislaus River.

Question. Can you bound the tract called "Las Mariposas?"

Answer. I cannot as to width, I only know its length from the hills to the San Joaquin River.

During my first visit there I discovered traces of Indians having roasted horses two or three days before. I usually encamped in the woods away from our fires, to avoid the attacks of the Indians.

(Signed) WILLARD BUSSELL.

UNITED STATES OF AMERICA,
Northern District of California, ss:

I, Henry B. Janes, a Commissioner duly appointed by the District Court of the United States for the Northern District of California, under and by virtue of the Acts of Congress entitled "An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States," passed March 1st, 1817, and the Act entitled "An Act to establish the Judicial Courts

of the United States," passed Sept. 24th, 1789, do hereby certify that the reason for taking the foregoing deposition, and the fact is, the witness is material and necessary in the cause in the caption of the said deposition named, and that the said deposition was taken by consent of parties.

I further certify that on the 23d day of November, in the year of our Lord one thousand eight hundred and fifty-three, I was attended by S. W. Inge, Esq., U. S. Dist. Att'y, and V. E. Howard, Esq., of counsel for appellee, and by the witness, who was of sound mind and lawful age, and the witness being by me first carefully examined, and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness, and from his statement, and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of returning the same to the court for which the same were taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto set my hand and seal this 23d day of November, in the year of our Lord one thousand eight hundred and fifty-three, and of the Independence of the United States the seventy-eighth.

[L. S.] (Signed) HENRY B. JANES,
U. S. Commissioner,

Duly appointed by the District Court of the United States for the Northern District of California.

SURVEYOR GENERAL'S OFFICE,
San Francisco, Cal., March 31st, 1853.

SIR: You are hereby appointed a Deputy Surveyor of the United States for this State, so far as may be necessary for you to execute a survey of the tract called "Las Mariposas," to the extent of ten sitios de ganado mayor, within the limits of the Sierra Nevada and the rivers called the Chanchilles, the Merced and the San Joaquin, and which you will perceive by the enclosed order of survey made by the Board of Land Commissioners, on the 28th of January, 1852, they required to be made by locating the said quantity of ten sitios according to the claim of said Fremont, and by reference to the sketch or plan annexed to this petition, but in such manner as to confine such location within the said limits, and to include in the survey so to be made, the said quantity of ten sitios.

Enclosed you have a copy of the map, a sketch signed by Alvarado, thus referred to as being annexed to the petition, and in the absence of more precise directions from the Commissioners, you will

have to make the survey in conformity to the wishes of the claimant, controlled however, and governed by the Alvarado map.

Should the claimant desire any other lines to be run as boundaries of the claim than those which upon a personal examination of the country you should consider as being intended by the Alvarado map, you are at liberty to run them in addition to those you consider the intended boundaries.

The reasons for your assuming any lines or corners as the true ones of the claim, whether derived from an inspection of the ground, or the testimony which shall be offered you, should be fully stated in your field book.

Should you be apprised of there being any interfering claim or title, based upon any Spanish or Mexican grant, you will notify the owner thereof (in writing), or the parties in possession, of the time when you purpose executing the work, so that they may be present at the running of the lines or corners. You will keep full notes of the character and objections, and the names and residences of such persons as either party may believe to be able to give important evidence, and you will also carefully preserve and retain any papers, &c. &c., which may be given you bearing upon the subject. If any line or corner is agreed upon, it must be so entered in your field book, with names of consenting parties, &c.

You will be careful in making frequent observations as to the variations of the needle, and, as a check upon the accuracy of your courses and distances, it would be very advisable for you to correct some of your courses and distances with each other, or with some permanent natural object, by series of accurately observed angles, all the particulars thereto to be entered in your field book.

After making the survey of the lines you may deem the intended boundaries of the claim, you will proceed to ascertain the area embraced thereby, and should you find it to exceed ten sitios you will curtail the survey to that area by running such line or lines as may be necessary for that purpose.

You should erect mounds or posts at your corners, or else identify them in such other way that it may be easy at any time from your notes to ascertain their position with certainty and without difficulty.

Your survey must be made in chains and links, according to the standard chain in this office, and by the true meridian, and the topography of the country to be fully noted in your field book; and whenever plans or diagrams will elucidate any point, they should be made in your field book.

Your field book, when returned, will have to be accompanied by an accurate map, showing all the lines run by you on a suitable scale, and exhibiting the topography of the country.

Before entering upon the survey, you and your men will have to be qualified in the manner prescribed when executing public work, and your field book will have to be verified by yourself and them in the manner directed in the general instructions.

Your report in relation to the execution of the survey should be full and minute, and such as will afford all the information possible, going to explain the reasons for adopting the lines, and thus make the Land Commissioners and this office acquainted with all the facts connected therewith which you may be enabled to ascertain during the execution of the work.

As you have made an agreement with the parties interested in relation to your compensation for making the survey, &c., nothing is required to be said by me on the subject, except that under no circumstances whatever, is this office to be in any manner responsible for any expenses growing out of the same.

Very respectfully, y'r obd't servant.

(Signed) SAML. D. KING,
Sur. Gen'l.

MR. A. W. VON SCHMIDT,
Present.

True copy of original in this office.

(Signed) SAML. D. KING,
Sur. Gen'l.

Sur. Gen'l Office, San Francisco, 6th August, 1852.

San Francisco, June 9th, 1852.

SAMUEL D. KING, Esq.,
U. S. Surveyor General,
State of California:—

SIR: I have the honor to report that according to your instructions to me directed, bearing date 31st March last past, ordering the survey of "Las Mariposas," claimed by Col. John C. Fremont, I have completed the said survey, and now have the honor of laying before you the accompanying field book and plan as the result of my labors.

Very respectf'y,
Yr. obdt. servant.
(Signed) A. W. VON SCHMIDT,
U. S. Deputy Surveyor.

True copy of original on file in this office.

(Signed) SAML. D. KING,
Sur. Gen'l.

Sur. Gen'l Office, San Francisco, 6th August, 1852.

Copy.

San Francisco, June 9th, 1852.

SAMUEL D. KING, Esq.,
U. S. Surveyor General,
State of California:—

SIR: In making the survey of "Las Mariposas," claimed by Col.

John C. Fremont, the whole tract has been located according to the sketch furnished me by you.

The variation of the needle in sections No. 1 and No. 2, I found by my observations to be 15° East. In section No. 3, I was unable to get a single observation, the nights being cloudy during the entire time of my surveying it. I therefore ran it with the same variation as sections Nos. 1 and 2.

I was unable to find any old corner or starting-point. The little slough laid down in the sketch I found to correspond, as also the general outline of the tract, and I think it is in keeping with the sketch.

I started from a high hill at the commencement of the plains; my reasons for which are, that I consider it a very prominent point, and one that can be found without difficulty hereafter at any time.

This hill is on the west side of the Mariposas river, just above the road leading from Belt's Ferry on the "Merced," to "Fort Miller" on the "San Joaquin." Upon its summit I erected a stone monument, styling it "Monument Hill." Thence I ran down on the plains and crossed the little slough as represented per plan.

The land on the upper part of this line is poor, with but little grass; that in the lower part, however, is first-rate, timbered on the river bank, and covered with fine grass, clover and wild oats.

The Mariposa river branches out in three different channels, as per plan, and loses its waters in the plains below. The San Joaquin river is distant about fifteen miles from the lower line of this section. I crossed the three branches of the Mariposas, thence run up on the other side of the river to the place of beginning. The soil on the lower part of this line is excellent, with fine grass and some little timber. The upper part of the section is poor, and the grass upon it not good.

The lines in this section were run according to my own judgment. The survey of section No. 2 was also run according to my best judgment, in keeping with the sketch accompanying my instructions, finding it impossible to follow the dividing ridge, as that would have taken in a scope of country greater than the claim calls for. I therefore run from hill to hill, selecting the highest points, as well as the circumstances and nature of the ground would admit of, on both sides of the river.

The ground in this section gradually rises from hills to mountains. The soil is poor, with here and there a spot that might be cultivated.

Timber scattering, consisting chiefly of white oak of small growth, grass poor.

In this section we found considerable quartz. In the river we saw many miners at work; in fact, the section might be termed as the commencement of the mining district.

The upper section, "No. 3," commences at the N. E. corner of section "No. 2," and is the roughest of the whole tract, being a con-

tinued succession of hills and ravines; this is the last I run, according to my own judgment. The whole of this section is mining land, consisting of river, gulch, and quartz-mining; of the latter there are immense ledges of stone near the upper part of this section. The line is run from ridge to ridge, and on the ridges whenever it would admit of it.

The northern part of the line passes on the top of a high ridge. This is not, however, the main ridge of the Sierra Nevada, but merely a spur. The main ridge I should suppose to be at least further to the N. E. of this point. The soil is poor, and covered with granite and quartz rock. The timber is not of the first quality, being rather short in the trunk; very little grass only grows on the borders of the small creeks; some fine litttle streams, with fine water, &c.

The nature of the country is about one and the same thing in the entire section of "No. 2."

I made the survey without any interference from the mining population whatever.

Very resp'ct'ly y'r ob'd't serv't.
(Signed) A. W. VON SCHMIDT,
U. S. Deputy Surv'r.

True copy of the original filed in this office.

(Signed) SAM'L D. KING,
Sur. Gen'l.

Sur. Gen'l's Office, San Francisco, 6th August, 1852.

Section No. 1.

Field notes of the survey of "Las Mariposas," in the State of California, by Allexey W. Von Schmidt, United States Deputy Surveyor General, under instructions from Samuel D. King, Esq., Surveyor General of the Public Lands in the State of California, bearing date March 31st, 1852.

(*Section No.* 1.) *Variation of Needle* 15° *East.*

Commenced on the top of a high rocky hill, named "Monument Hill," on the west side of the "Mariposas River," at the foot of the hills and commencement of the plains, and above the road leading from "Belt's Ferry," on the "Merced," to the "Chanchilles" and "Fort Miller." The foot of the hill is covered with large stone and some oak trees of a small growth. From this point an extensive view presents itself of the adjacent country. On the top of the hill I erected a large stone monument. A white oak tree, 18 inches in diameter, bears N. 37¾° W., distant 2 chains 30 links; a white oak tree 17 inches diameter, bears S. 78½° W., distant 1 chain 9½ links; a black oak tree, 14 inches diameter, bears S. 88½° E., distant 0 ch. 75 links. Thence—

S. 36¼° W., down on the plains towards the San Joaquin River to foot of hill, 10 chains, a ridge of small hills just to the right, run down about 20 chains; they then run off in a northerly direction, 64 chains, to road leading to Belt's Ferry on the Merced to Fort Miller, 400 chains 26 links, planted stake, and made a mound; soil poor, grass not very good; a large tree in the river, S. 30° E., bears; a large willow tree, 12 inches in diameter, bears S. 38¼° W., distant to bank of the river 17 chains 35 links. Thence—

N. 76¼° W., run for a large oak tree, being the outside one of all in sight, 50 chains, across slough 10 links wide, runs N. W., 67 chains across said slough, 12 links wide, to tree 180 chains 70 links; marked tree three notches both sides, stands on west side of slough; soil not very good, grass better than the last; a white oak, 29 inches diameter, bears S. 47° E., distant 7 chains 23 links; fork of river bears S. 58½ W., distant 49 chains 16 links, to a large oak tree, one chain below the forks stands in the middle of the north branch; at this spot two squatters, by the names of Betty and Crawford, claim 160 acres each from this point down the river on both sides. Thence—

N. 82° W. to slough, 18 chains 70 links, 1 chain wide, to tree, 73 chains 24 links; marked tree three notches both sides; a large oak, 53 inches in diameter, bears S. 35½° W., distant 6 chains 8 links; two small oak trees fork near the ground, 18 inches diameter, bear N. 43¼° W., distant 3 chains 75 links; junction of slough with north branch of river bears S. 12° E., distant 27 chains, and lower line of squatter's claim; soil first rate, some timber, fine grass. Thence—

S. 80¼° W., runs for a large black oak tree; to tree 50 chains 60 links; marked tree three notches on both sides; soil and grass as last. Thence—

S. 88½° W., run for a large burr oak standing on bank of the north branch of the river, 207 chains 36 links; marked tree four notches on both sides; a large hollow oak tree bears S. 54° W., distant 2 chains 17 links. Thence—

S. 80° W., run for oak tree standing on north bank of North Fork or Branch; to tree 91 chains; marked tree three notches on both sides. Thence—

S. 79¾° W., run in the direction of a solitary tree standing on south bank of north branch 51 chains 30 links; made a mound, and planted a stake, being S. W. corner of Section No. 1. Thence

S. ¾° W., to north fork 10 chains 40 links, 40 links wide to middle fork, 76 chains 50 links, 40 links wide; to Main River 120 chains 50 links wide, blazed a large oak tree stands in middle of river, 160 chains planted a stake, and made a mound, making S. E. corner of

Section No. 1; soil first rate, rather wet, grass fine, clover, wild oats, &c. &c. Thence

N. 79½° E., run for a solitary oak tree (very large); to tree 311 chains 80 links; marked tree three notches, both sides. Thence—

East 460 chains 70 links, made a mound, and set a stake. A large quartz rock (Castle Rock) bears N. 46¾° E.; a sugar-loaf mountain bears N. 83° E.; Monument Hill bears N. 36° E. Thence

N. 60° E., 204 chains 10 links, planted a stake and made a mound; Monument Hill bears N. 10¼° W.; Col. Fremont's house bears N. 78¼° W.; Sugar-loaf Mount bears N. 64° E. Thence

N. 44¼° E., 59 chains; cross-road leading from Belt's Ferry, on the Merced, to Fort Miller, 112 chains; planted a stake and made a mound. Sugar-loaf Mount bears N. 64° E.; Col. Fremont's house bears N. 73¼° W.; a sugar loaf mountain bears S. 85° E. Thence—

N. 20¼° W., run for monument on Monument Hill, place of beginning, to Mariposas River 89 chains, 2 chains wide; 93 chains across an old slough 10 links wide, 97 chains across another 40 links wide to monument 119 chains 50 links; soil rather poor on last three courses, some timber on river banks, and some fine grass, &c. &c.

Section No. 2. (*Variation of the Needle* 15° *East.*)

Commenced at N. E. corner of section No. 1. Thence—

N. 31¼° E., to hills 110 chains; 168 chains made a monument out of stone. Ground rolling, land poor, some good grass; pass over several veins of quartz. Thence—

N. 5° E., run for a white oak tree to creek 67 chains 10 links wide, to tree, 102 chains 37 links; marked tree 4 notches on both sides. Thence—

N. 6½° E., 12 chains 64 links, little creek, 10 links wide, fine water; 49 chains made a monument out of quartz rock; ground rolling, about the same as last; a white oak tree 23 inches diameter bears N. 63° W., distant 2 chains 53 links. Thence—

N. 50¼° E., run for a tree standing on the top of a high rocky hill 19 chains, a deep ravine, to tree 40 chains 50 links; marked tree three notches, both sides. Thence—

N. 56½° E., run for two white oak trees (the right hand one of the two), to tree 89 chains 15 links; marked tree three notches, both sides. Thence—

N. 41¼° E., run for a white oak tree, the top just visible; from the station to the tree 44 chains 77 links; stands within 10 links of a large pile of quartz rock; marked tree three notches, both sides; Castle Rock bears S. 88° E.; ground poor and hilly, little grass, soil poor. Thence—

N. 35½° E., run for a white oak tree on the top of a high hill; part of the tree grows over a rock to a little branch 27 chains 5 links wide, little water running; to the tree 63 chains 50 links; ground very rough, little grass, soil poor, some little timber; a white oak 17 inches diameter bears N. 21½° W., distant 30 links; a white oak 19 inches diameter bears S. 61½° W., distant 28 links. Thence—

N. 53¾° E., run for two white oak trees (the right hand one of the two) standing on a bald hill to Stony creek 32 chains 50 links, 20 links wide, to tree 114 chains 37 links; marked tree four notches, both sides; Castle Rock bears S. 8¼° W.; a white oak 25 inches diameter bears N. 13° W., distant 10 links. Thence—

S. 51¾° E., run for an oak tree on top of a hill to a little creek 51 chains 50 links, 8 links wide; another creek 79 chains, 10 links wide, to tree 97 chains; marked tree three notches on both sides; on this line passed the first pine tree; a sugar-loaf mound bears N. 54½° W.; a white oak tree 18 inches diameter bears S. 70½° W., distant 1 chain 58 links; ground very rough and hilly, some fine grass, and good white oak timber without undergrowth, &c. &c. Thence—

N. 47¼° E., run for a little scrubby oak to the tree 33 chains 30 links; Sugar-loaf Mountain bears W. 67° S. Thence—

N. 48¼° E., run for a white oak 36 chains 48 links to tree; the tree has been marked three times before; re-marked three notches on both sides. Thence—

S. 60° E., run for a white oak tree, to tree 40 chains 40 links; marked tree three notches, both sides; country very hilly and rocky; some fine white oak timber, little grass, soil poor. Thence—

N. 56½° E., run for a white oak tree standing on a high hill, to tree 36 chains 30 links; marked tree four notches, both sides; a white oak 19 inches diameter bears S. 37½° E., distant 28 links; a sugar-loaf mound bears N. 82¼° W. Thence—

N. 62½° E., run for a white oak tree on a high ridge, to tree 87 chains 40 links; marked tree three chops, both sides; a white oak tree 23 inches diameter bears S. 15½° E., distant 90 links; Sugar-loaf Mountain bears S. 88½° W. Thence—

S. 86½° E., run for a tall pine on top of a high hill, to tree 42 chains 50 links; marked tree three notches, both sides; a small white oak 15 inches diameter bears N. 20° W., distant 1 chain 20 links. Thence—

N. 23¾° E., run for a small white oak tree standing on a high ridge, to a little creek 64 chains 20 links wide, to a road leading up to Mariposas and Agua Frio 67 chains, to tree 148 chains; marked tree on side came on three notches, and side came off × and two notches; this being the N. E. corner of section No. 2. A white oak tree 18

inches diameter bears S. 60¾° E., distant 76 links; a white oak tree 40 inches diameter bears N. 27½° E., distant 1 chain 56 links. Thence—

N. 76° W., run for a large black looking pine tree on a high ridge on the opposite side of the Mariposas river, to river 33 chains, across river 80 links, to tree 65 chains 20 links; marked tree, on side came on × and two notches, and side went off × and three notches. This makes the N. W. corner of section No. 2. A white oak 20 inches diameter bears N. 48¼° W., distant 88 links; a pine tree bears N. 121¼° W., distant 2 chains 57 links. Thence—

S. 21¼ W., run for a white oak tree to a little creek 40 chains 10 links wide, to tree 65 chains 25 links. Thence—

S. 63½° W., run to a small white oak tree, to tree 13 chains 48 links; marked tree three notches, both sides. Thence—

S. 81¾° E., run for a white oak tree on top of a rocky hill, to tree 122 chains 50 links; marked tree 4 notches both sides; a white oak 30 inches diameter, bears N. 8° E., distant 16 links; a large white oak 24 inches diameter, bears S. 43¼ E., distant 47 links; country very rough and rocky, some fine timber, small growth, grass very poor, soil red, fine gold soil, miners at work on the river. Thence—

S. 78¼° W., run for a large white oak tree on the top of a high hill, to tree 48 chains; marked tree three notches both sides. Thence—

S. 66¾° W., run for top of Sugar-loaf Mound to a small creek 40 chains 15 links wide, to top of mound 154 chains; made a large stone monument; a high peaked mountain bears N. 55° W., Castle Rock bears S. 3° E. Thence—

S. 44¼° W., run for a white oak tree; passed at 50 chains a great quartz vein, looking very much like a wall, to a little creek 100 chains 5 links wide, 102 chains; another great quartz vein to tree 152 chains 60 links; marked tree three notches both sides; a white oak 26 inches diameter bears N. 3¾° W., distant 1 chain 22 links; Castle Rock bears S. 37½° W. Thence—

S. 32½° W., run to a white oak tree, to a little branch 100 chains 8 links wide, to tree 150 chains 20 links; marked tree three notches both sides. Thence—

S. 48° W., run for a lone tree on top of high mound, to tree 63 chains 73 links; marked tree three chops both sides; a small scrubby oak 15 inches diameter bears S. 51¼° W., distant 2 chains 72 links; a round top hill bears S. 66° W. Thence—

S. 28¼° W., run for a monument on Monument Hill, to monument 285 chains 75 links; ground rolling, soil poor, very few trees, grass poor.

Note.—The lower line of section "No. 2" being in common with

the upper line of section "No. 1," S. 20¼° E., 119 chains 50 links, to point of beginning.

Section No. 3. (*Variation of the Needle* 15° *East.*)

Commenced at the N. E. corner of Section "No. 2;" marked side went off a blaze and two notches. Thence—

N. 63¾° E., run for a white oak tree on top of a ridge, to tree 30 chains 20 links; marked tree three chops both sides; soil poor, timber of various kinds, such as white oak, pine, and undergrowth, &c., &c., &c. Thence—

N. 62¼° E., run for a large white oak tree, to tree 15 chains 40 links; timber the same as last marked tree; two notches both sides. Thence—

N. 73¼° E., run for a white oak tree, a little creek at 16 chains 11 links wide, another creek 66 chains 15 links wide, another creek 112 chains 25 links wide (fine water), to tree 134 chains 90 links; marked tree three notches both sides; a white oak 26 inches diameter bears S. 79¾° E., distant 2 chains; a white oak 30 inches diameter bears N. 31¾° E., distant 2 chains 25 links. Thence—

N. 1¼° W., run for a large black oak tree on the top of a high hill, to a creek 57 chains 15 links wide; to tree 98 chains 75 links; marked tree three notches both sides; country very rough; tremendous large granite stone cover the ground in all directions; timber white and black oak, pine, &c. &c. Thence—

N. 79° E., run for a large pine tree standing among a large pile of granite rocks, to tree 21 chains; marked tree three notches both sides. Thence—

S. 74½° E., run for a tall pine tree, to tree 27 chains 50 links; marked tree three notches both sides. Thence—

S. 62½° E., run for a large pine tree, to tree 13 chains 30 links; marked tree three notches both sides. Thence—

S. 76¾° E., run for a white oak tree, to tree 16 chains 80 links; marked tree 2 notches both sides; a pine tree 16 inches diameter bears N. 34° W., distant 1 chain 23 links; a black oak 18 inches diameter bears S. 68 E., distant 85 links. Thence—

N. 2¾° W., run for a large pine tree standing among some large granite rocks, to a little creek 43 chains 10 links wide; to tree 85 chains 90 links (tree has been marked before); marked tree three notches both sides; ground mostly covered with large granite stones, poor timber, chapparel, country very much broken up by deep ravines. Thence—

N. 11¾° E., run for a large pine tree just below a large pile of granite rocks, to tree 104 chains 70 links; marked tree three notches. Thence—

N. 1° W., run for a tall pine tree, to tree 8 chains 15 links; marked tree three notches both sides. Thence—

N. 23¾° W., run for a white oak tree on top of a ridge, to tree 47 chains 25 links; marked tree three notches both sides; a white oak 22 inches diameter bears N. 77½ W., distant 35 links; a large white oak 26 inches diameter bears N. 34½° E., distant 2 chains 25 links; some good white oak timber, ground not so rough as the last. Thence—

N. 15° W., run to an oak tree to small creek, 13 chains 7 links wide, to tree 26 chains 50 links; marked tree three notches both sides; a quartz mill bears E. 37° W. (called Stockton mill); forks of Stockton creek bear S. 26° W. about 25 chains. Thence—

N. 19° W., run for a white oak tree on a high ridge, small creek at 12 chains 8 links wide; to tree 52 chains 40 links; marked tree 4 notches; a white oak 16 inches diameter bears S. 34° W., distant 50 links; a white oak 26 inches diameter bears N. 21½° E., distant 1 chain 25 links; quartz mill bears S. 47° W. Thence—

N. 22° W., run to a small white oak tree, to tree 22 chains; marked tree 4 notches both sides. Thence—

N. 51° W., run for a pine tree on a high peak, on the other side of Stockton creek, near the top of main ridge, to Stockton creek 12 chains 50 links, 50 links wide, to tree 36 chains 50 links; marked tree three notches both sides; a large adobe house in the centre of Mariposas town bears S. 28½° W.; a quartz mill bears S. 16¾° W. Thence—

N. 23¾° W.; run for a small white oak on top of main ridge, being the highest peak on this ridge or mountain, to tree 12 chains; tree has been marked 12 chops before; re-marked tree 12 notches; a quartz mill bears S. 9½° W., a white oak 13 inches diameter, bears N. 1½° E., distant 1 chain 25 links; a black oak 16 inches diameter bears S. 40¼° W., distant 58 links; a black peaked mountain bears S. 86½° W. Thence—

N. 38½° W., to a large white oak tree 7 chains 30 links; marked tree three notches both sides; Black Peak bears S. 85 W.; thick chapparel bushes on the two last lines; very rough and rocky, very little timber. Thence—

N. 9° E., run for a white oak tree, to tree 9 chains 55 links; marked three notches on tree, both sides; Black Peak bears S. 80° W. Thence—

N. 41¼° W., run for a white oak tree on a high ridge, at 16 chains crossed two ditches, to tree 39 chains 60 links; marked tree three notches both sides; Black Peak bears S. 45½° W. Thence—

N. 61¼° W., run for a pine tree 20 chains, across road leading from Mariposas town to Maxwell's creek; small creek at 35 chains 8 links

wide; 56 chains another small creek, 6 links wide; to tree 67 chains 20 links; marked tree X and three notches on both sides; Mariposas town bears S. 32° E.; Pine Peak bears S. 45° W.; Mount Bullion bears N. 57° W.; soil, scarcely none; some little timber, but poor small growth, chapparel, &c. &c. Thence—

S. 79½° W., run for a black looking pine tree standing just on the left of a high hill, on the opposite side of the east fork of Mariposas river, to river 4 chains 25 links wide, heads about a mile and a quarter above this, creek forks 3 chains above this point; a road crosses at this place leading from Mariposas town to Stockton; to tree 71 chains 30 links; marked tree three notches both sides; Pine Peak bears S. 13½° E. Thence—

S. 53° W., run for a large pine tree, to a road, Stockton and Mariposas, 10 chains 50 links; another road at 38 chains; to tree 48 chains 45 links; marked tree 3 notches both sides; soil poor and rocky, little good timber. Thence—

N. 74° W., run for a pine tree standing on top of a round top hill, to tree 20 chains 20 links; marked tree 3 notches both sides; Mount Bullion bears N. 18° W.; Agua Frio town bears S. 12¾ W.; Green Top Mountain bears S. 21¾° W. Thence—

N. 84° W., run for a large pine tree to a small creek, 36 chains 10 links wide, to a tree 42 chains 10 links; marked tree 2 notches both sides. Thence—

N. 70½° W., run for a white oak tree, to tree 11 chains 60 links; marked tree 2 notches both sides. Thence—

N. 84° W., run for a pine tree, to tree 11 chains 25 links; marked tree 3 notches both sides. Thence—

S. 83¼° W., run for a tall pine tree, to tree 31 chains 69 links; marked tree 16 notches and 4 X; a three pronged white oak 31 inches diameter bears N. 54½° W., distant 90 links; a white oak 32 inches diameter bears S. 81° W., 82 links; a white oak 32 inches diameter bears S. 13¾° W., distant 56 links; a lone tree on Mount Wright bears S. 20¾° E.; a high peak of Mount Bullion bears S. 7° W. Thence—

S. 46¾° W., run for a large pine tree, at 15 chains crossed road leading from Agua Frio town to Stockton; to creek, or west branch of Mariposas river 18 chains 50 links wide, within a mile of its source; to tree 26 chains 60 links; marked tree 2 notches both sides. Thence—

S. 51½° W., run for a solitary pine tree standing on a hill, covered with chapparel; the whole of this line passes through chapparel; plenty of quartz; rich diggings close at hand; to tree 25 chains 10 links; marked tree 3 notches both sides; Black Peak bears S. 72¼°

E.; lone tree on Mount Wright bears S. 29½° E.; a high peak on Mount Bullion bears N. 11¼° E. Thence—

S. 16½° E., run for a lone pine to a little creek 12 chains 5 links wide, a little creek 16 chains 4 links wide, another creek at 22 chains 10 links wide, to tree 53 chains. The whole of this line passes through a thick chapparel; marked tree three notches, both sides; any quantity of quartz. Thence—

S. 26¼° W., run for a large black pine tree, to tree 66 chains 25 links; marked tree three notches on four sides, with a × above each three notches; a little creek at 17 chains 5 links wide; another creek at 44 chains 58 links, 20 links wide; a white oak 15 inches diameter bears N. 41¼° W., distant 75 links; a black oak 16 inches diameter bears S. 82¾° W., distant 1 chain 20 links; Black Peak bears N. 81¼° W.; lone tree on Mount Wright bears S. 77½° W. Thence—

S. 43½° E., run for a large black oak, to tree 17 chains 55 links; marked tree two chops, both sides. Thence—

S. 58½° E., run for a white oak tree, to tree 3 chains 45 links; marked tree three notches, both sides. Thence—

S. 48½° E., run for a pine tree, to tree 18 chains 40 links; marked tree three notches, both sides; soil poor; some good white oak timber and pine. Thence—

S. 28½° E., run for a tall pine tree, standing on a high ridge; a road at 21 chains from Agua Frio to Stockton; creek at 54 chains 50 links wide, to tree 56 chains 25 links; marked tree three notches on both sides; lone tree on Mount Wright bears N. 58° E.; peak No. 2, Mount Wright, bears N. 81° E. Thence—

S. 23° E., run for a small pine tree, to tree 22 chains 20 links; marked tree two notches, both sides; peak No. 2, Mount Wright, bears N. 70½° E.; peak No. 3, Mount Wright, bears N. 87¼° E. Thence—

S. 13½° E., run to a pine tree, to tree 17 chains; marked tree two notches, both sides; land rolling, some timber, chapparel, bushes, &c. Thence—

S. 20¾° E., run for a large pine tree, to tree 25 chains; marked tree two notches, both sides. Thence—

S. 35½° E., run for a white oak tree standing just below a pile of granite rocks to a little creek 40 chains 20 links wide, to tree 82 chains; marked tree four notches; lone tree on Mount Wright bears N. 2¼° E.; peak No. 2 bears N. 19° E.; peak No. 3 bears N. 47½° E.; a quartz mill bears N. 10½° E., distant about ¾ mile (Guadaloupe); a quartz vein, worked by Mexicans, bears N. 27½° W., distant about ½ mile. Thence—

S. 30¼° E., run for an oak tree standing on a high ridge, to tree 25 chains 60 links; a little creek at 52 chains 6 links wide; another creek at 72 chains 5 links wide; another creek at 85 chains 8 links wide to tree 107 chains 80 links; marked tree three notches, both sides. Thence—

S. 3½° E., run for a white oak tree, standing on a high ridge, to tree 25 chains 60 links; marked tree three notches on both sides; timber and soil poor. Thence—

S. 1¼° E., run for a white oak tree standing on the eastern point of a high ridge, surrounded by large granite rocks, to tree 14 chains 25 links; marked tree three notches, both sides; some bushes and pine timber and white oak; peak No. 3 on Mount Wright bears N. 16¼° E. Thence—

S. 11½° E., run to a forked white oak tree, to tree 68 chains 50 links; marked tree four notches on both sides. Thence—

S. 58° W., run for a white oak tree, to tree 7 chains; marked tree two notches, both sides. Thence—

S. 4¼° W., run for N. W. corner of "section No. 2," a large pine tree, to tree 31 chains 25 links; marked tree, side came on × and three notches.

Note: The lower line of "section No. 2" being the upper line of "section No. 3," both sections having this line in common, S. 75° E., 65 chains 20 links to place of beginning.

We hereby certify that we assisted Allexey W. Von Schmidt, Deputy Surveyor, in surveying a tract of land known as "Las Mariposas," and that said tract has been in all respects, to the best of our knowledge and belief, well and faithfully surveyed, and the boundaries marked according to the instructions furnished by the Surveyor General.

JAMES SCOTT,
ENOCH MOORE,
Chainmen.

Subscribed and sworn to, by the above named persons, before me, a Justice of the Peace for the City and County of San Francisco and State of California, on this 11th day of May, 1852.

P. W. SHEPHERD,
Justice of the Peace.

I, Allexey W. Von Schmidt, Deputy Surveyor, do solemnly swear that in pursuance of instructions received from Samuel D. King, Surveyor General of the Public Lands of the United States in the State of California, on the 31st of March, 1852, and in strict conformity with the laws of the United States, furnished by the said Surveyor General, I have faithfully surveyed the exterior bounda-

ries of a tract of land known as "Las Mariposas," in said State, and do further solemnly swear, that the foregoing are the true and original Field Notes of such survey.

ALLEXEY W. VON SCHMIDT,
Deputy Surveyor.

Subscribed by said Allexey W. Von Schmidt, Dep'y Surveyor, and sworn to before me, a Justice of the Peace for the City and County of San Francisco, California.

P. W. SHEPHERD,
Justice of the Peace.

U. S. SURVEYOR GENERAL'S OFFICE,
San Francisco, California, 6th of August, 1852.

The foregoing and hereunto attached pages contain a copy of the field notes returned to and on file in this office, which have been approved.

(Signed) SAMUEL D. KING,
Sur. Gen'l Cal.

I, George Fisher, Secretary of the Board of United States Commissioners to ascertain and settle the Private Land Claims in the State of California, hereby certify that the foregoing is a full, true, and correct copy of a paper on file among the Archives of said Board, and in my care and custody as such Secretary.

Witness my hand, this 26th day of November, 1853.

(Sd.) GEO. FISHER,
Sec't'y.

U. S. DISTRICT COURT,
Northern District of California:

THE UNITED STATES, Appellant,
vs.
JOHN C. FREMONT, Appellee.
} November 26th, 1853.

William M. Eddy, being duly sworn in open court says: I am the author of the map of California, made in 1853, now shown me.

Question. State upon what information or data the Mariposas County, bounded by the Sierrra Nevada, the Chanchilles, the Merced, and the San Joaquin are represented on your map.

Answer. The location of the village of Mariposas is from astronomical observations taken by myself. The country between Mariposas Village and Snellings, on the Merced river, embracing a district of some twenty miles in width, on the line of the road, as laid down on the map, from personal recognizance. The portion in the vicinity of the San Joaquin, and the location of the Chanchilles, originally placed on the map, from official data, fur-

nished me as Surveyor General of the State by two different Deputy County Surveyors of Mariposas County, all of which was verified by myself from the data furnished me from the U. S. Surveyor Gen'l's Office; and the streams, as laid down on this map, coincide with the actual measurements made by the U. S. Deputy Surveyor in his survey from the base line, near Stockton, to the Four Creek country. On no part was the difference on the line last spoken of, as ran by the U. S. Deputy Surveyor, found to exceed what might naturally occur in plotting a map on this scale. The location of the head waters of the Merced, including the Yosimette Valley, is placed on the map from data furnished by Lieut. McLane, of the U. S. Army. The head waters of the Chanchilles is from data furnished by the Deputy County Surveyors. The head waters of all the before-mentioned streams rise in the Sierra Nevada Mountains.

Cross-examined.

Between the summit of the Sierra Nevada Mountains and the San Joaquin, and the rivers Merced and Chanchilles, there are more than one hundred square leagues of land; between the San Joaquin, the Merced and Chanchilles rivers and the foot of the mountains aforesaid, there is something less than 100 leagues of land.

(Sd.) WM. M. EDDY.

U. S. DISTRICT COURT,
Northern District of California:

THE UNITED STATES, Appellants,
vs.
JOHN C. FREMONT, Appellee.
} Nov. 26th, 1853.

J. G. McDonald being duly sworn in open court, deposes and says: I am a practical surveyor; I am a deputy surveyor in the U. S. Surveyor General's office, in the State of California.

Question. Will you state the difference on Eddy's Map of the State of California of 1853, from the point where the Chanchilles emerges from the Sierra Nevada to the Mariposas River, in a straight line; also the distance from the same point to the river Merced in a straight line?

Answer. It is eight and one half miles from the Chanchilles River to the Mariposas River, and twenty-four miles from the same point to the river Merced, according to the scale of said map.

I have been accustomed to survey Mexican grants in Texas for about seven years.

Question. State what is the usage and custom of surveyors of Mexican grants as to the point of commencement of survey, where four sides of the survey are mentioned, but no particular point of commencement is designated by the language of the grant.

Answer. It is customary to begin at the first named boundary.

Question. How would you survey a grant with the following boundaries: bounded by the Sierra Nevada and the rivers known by the names of the Chanchilles, the Merced, and the San Joaquin?

Answer. I would begin where the first named river emerges from the mountains, then I would proceed across, along the foot of the mountains, to the next river; then I would run down between the two rivers, following the meanderings for quantity; there would be no difficulty in surveying said grant, providing the mountains and the streams could be found.

Cross-examined.

I have never been on the Mariposas tract, or in the Mariposas county; the opinions I have expressed are theoretical opinions, from the said map as aforesaid; I know nothing as to the correctness of said map; I should think there were near 100 square leagues of land within the boundaries above mentioned, to wit: the Sierra Nevada and the rivers known by the names of the Chanchilles, the Merced, and the San Joaquin; I mean when I say that the boundaries could be easily run off, that they could be if the boundaries mentioned in the grant could be found at the place.

Question. How would you run off ten square leagues within those general boundaries, where no starting-point was given in the grant?

Answer. I would commence where the first-mentioned stream emerges from the mountains, thence along the foot of the mountains to where the second stream emerges from the mountains, and meander down the stream for quantity; this would give three of the original boundaries.

Question. Does the map in the transcript conform to the rules that would govern you in making the survey?

Answer. It does not.

It is over twenty-three miles from the source of the Chanchilles to the source of the Merced.

J. G. McDONALD.

(Endorsed) "Filed Nov. 26th, 1853."

UNITED STATES vs. JOHN C. FREMONT. } No. 1.

Motion by the appellee to take further testimony in the case, on the ground of newly discovered evidence, and specially the deposition of Juan B. Alvarado, for the reasons stated in the accompanying affidavits, and that this case be opened for further evidence and argument on the same.

V. E. HOWARD,
for the motion.

(Endorsed "Motion to take further testimony." "Filed Dec. 5th, 1853.")

UNITED STATES
vs.
JOHN C. FREMONT.

Personally appeared Juan B. Alvarado, who being sworn upon his oath says: That he did not take possession of, settle, and build a house, within the time mentioned in the grant, because it was impossible for him to do previous to the time he sold same to John C. Fremont, owing to difficulties growing out of wars, revolutions, and Indian hostilities; and for the further reason that Micheltorrena, at the time the grant was made and delivered to him, as Governor of California and commander-in-chief of the military forces, promised this deponent a sufficient military force to enable him to take possession of his grant and defend himself against the Indians; that Micheltorrena was subsequently unable to do so, because there were no funds in the treasury to enable him to do so and defray the expenses of supporting such force, but expressly assured this deponent that the time should be extended to such time as the condition of the country should enable this deponent to take possession without a military force, and comply with the conditions of his grant in this respect; affiant further says that the condition of the Mariposas country was rendered more unsafe from Indian hostilities after the grant, because in the year 1844, the fort situated on the San Joaquin river in the vicinity of the grant commanded by Genl. Castro, was broken up, and the troops withdrawn by order of the Government, which left that section of country entirely defenceless and exposed to Indian hostilities; affiant states further that it was the universal custom of the Mexican Government to extend the time of grantees to comply with the condition of settlement, where the same had been retarded by Indian hostilities; affiant further says that the principal consideration of the grant in this case to the Government was, services which he had rendered to the same.

(Sd.) JUAN B. ALVARADO.

Sworn to Dec. 5th, 1853, before me,

HENRY B. JANES,
U. S. Commissioner.

(Endorsed) "Affidavit of Genl. Alvarado." "Filed December 5th, 1853."

UNITED STATES
vs.
JOHN C. FREMONT.

Personally appeared George W. Wright, who being duly sworn, deposeth and saith that, since the trial of the above entitled cause he has discovered other and further testimony to the following effect, to wit: Testimony to prove that the time for the performance of the

conditions of settlement and building a house, and the obtaining judicial survey and possession, was uniformly extended by Micheltorrena in all grants similarly situated to that of the Mariposas, and that time was expressly extended to Alvarado in the above stated case.

The affiant has used all reasonable diligence to prepare this case for trial before it was submitted; he could not procure the foregoing evidence because he did not know of its existence, until after it was submitted.

(Sd.) G. W. WRIGHT.

Sworn to Dec. 5th, 1853, before me,

HENRY B. JANES,
U. S. Commissioner.

(Endorsed) "Affidavit of G. W. Wright." "Filed Dec. 5th, 1853."

U. S. COMMISSIONER'S OFFICE.

THE UNITED STATES vs. JOHN C. FREMONT. } Testimony de bene esse by order of Court, Dec. 7th, 1853.

S. W. Inge, Esq., U. S. Att'y, objects to the taking of this deposition as irregular and contrary to law.

Juan B. Alvarado, being duly sworn and cautioned, says, in answer to—

Question. Why did you not take possession of the grant originally made to you in this case, within a year from the date of the grant?

Answer. I did not take possession of it at that time because of the hostility of the Indians.

Question. How long did these hostilities continue?

Answer. All the time, even to the present day, though not so much now as formerly.

Question. State any other reasons, if any, why you did not take possession.

Answer. Another, and the principal reason for my not taking possession was, that after I got the title in my possession, I went to Micheltorrena and requested him to give me a force sufficient to enable me to take possession of the Mariposas, assigning as a reason that I was very anxious to take possession, and live there; Genl. Micheltorrena said he would furnish me with a force, but at that time he had none at his disposal. Micheltorrena, however, agreed to withdraw from the grant all the conditions expressed therein, in order to avoid the necessity of my taking possession; I declined having the conditions stricken out, and told Gov. Micheltorrena that my object in obtaining the grant was to live on the tract, which was a matter of great importance to me. Genl. Micheltorrena then told

me that he would procure a force of Californians and have them sent up there.

The reason for promising to send Californians was that all the Mexican troops in the country were infantry. Soon after this conversation a force was sent up to "Las Mariposas," under command of Genl. Castro, and established themselves on the bank of the San Joaquin; in consequence of the loss of horses by the Indians' robberies, and the want of other resources, they were compelled to return. Shortly after there was a revolution, and Micheltorrena's affairs becoming embarrassed, no more troops were sent.

All this occurred in A. D. 1844. In 1845, while I was commander at Monterey, I collected the cavalry and took them to my rancho, near Monterey, and was then organizing the troops for the purpose of taking possession, by their aid, of the Mariposas, when I received an order from Genl. Castro to return with the troops to Monterey, there being then rumors of war. This was my last effort to take possession of the Mariposas tract, the orders I received from government to organize forces for other purposes requiring my attention.

Question. Did Governor Micheltorrena make you any promise respecting the conditions of the grant, after the time of which you have spoken?

Answer. No. Gov. Micheltorrena had left the country and gone to Mexico; he left, I think, in January or February 1845.

Question. Was the promise of the forces to aid you made at the time the grant was given you?

Answer. I received the title at my rancho, and two days afterwards saw Gen. Micheltorrena, and it was at that time that Genl. Micheltorrena offered me the troops, as I have stated. I declined having the conditions stricken out, as I desired to live there, and wanted the troops for my protection.

Question. Was there a custom of the Governors of California in relation to the question of fulfilment of grants by grantees, and if so, what was it?

Answer. There was a custom: the Governors generally excused and overlooked the failure of grantees to take possession, by reason of hostilities; this has always been the custom; such was my custom when I was Governor of California. The only reason recognized by the Governors for extending the time for taking possession, was Indian hostilities.

Cross-examined by the U. S. Attorney.

Question. Were you ever on the Mariposas tract?

Answer. I never was there.

Question. Did you go with the troops and Genl. Castro to the San Joaquin?

Answer. I did not.

Question. Did any communication in writing ever pass between

you and Genl. Micheltorrena, respecting the matters to which you have testified?

Answer. No; they were all in conversation with him.

Question. Were the Indians dangerous and hostile in that country before 1844?

Answer. Yes, always.

(S'd) JUAN B. ALVARADO.

UNITED STATES OF AMERICA,
Northern District of California, ss:

I, Henry B. Janes, a Commissioner duly appointed by District Court of the United States for the Northern District of California, under and by virtue of the Acts of Congress entitled "An act for the more convenient taking of affidavits and bail for civil causes depending in the Courts of the United States," passed February 20th, 1812, and the Act of Congress entitled "An act in addition to an Act entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States," passed March 1st, 1817, and the Act entitled "An act to establish the Judicial Courts of the United States," passed September 29th, 1789, do hereby certify that the reason for taking the foregoing deposition is that the same was ordered by the United States District Court.

I further certify that on the 7th day of December, in the year of our Lord one thousand eight hundred and fifty-three, I was attended by V. E. Howard, Esq., of counsel for claimant, and S. W. Inge, Esq., U. S. District Attorney, and by the witness, who was of sound mind and of lawful age, and the witness was by me first carefully examined, and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness, and from his statements, and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of returning the same with my own hand to the court for which the same was taken.

And I do further certify, that I am not of counsel or attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand and seal this 7th day of December, in the year of our Lord one thousand eight hundred and fifty-three, and of the Independence of the United States the seventy-eighth.

[SEAL.] (Signed) HENRY B. JANES,
U. S. Commissioner.

At a special term of the District Court of the United States of

America for the Northern District of California, held at chambers, in the City of San Francisco, on Monday the 5th day of December, in the year of our Lord 1853—

Present—The Honorable Ogden Hoffman, Jr., District Judge.

THE UNITED STATES, Appellant,
vs.
JOHN C. FREMONT, Appellee.

On reading and filing the affidavits of G. W. Wright and J. B. Alvarado in this case, it is ordered that claimant be allowed to file the deposition of Juan B. Alvarado "de bene esse" as testimony.

(Endorsed) "Filed Dec. 7th, 1853." "Order to take further testimony."

U. S. DISTRICT COURT.

THE UNITED STATES, Appellant,
vs.
JOHN C. FREMONT, Appellee.

This case comes up on appeal from the Board of Commissioners for ascertaining and settling the private land claims in California, by whom the claim of the Petitioner was confirmed.

The title of the claimant is derived by a mesne conveyance, the execution of which is not disputed, from Juan B. Alvarado.

The original petition of Avarado, upon which the grant issued, bears date February 22d, 1844, and represents that being desirous of increasing his land and contributing to the spreading of agriculture, and the industry of the country, he solicits the Governor, according to the Colonization Laws, to grant him 10 leagues of land north of the river San Joaquin, within the limits of the Sierra Nevada Mountains, in the same direction the River Chanchilles on the east, that of the Merced on the west, and the before-mentioned San Joaquin; with the name of the Mariposas. He also represents that he is unable to present a plan or draft of said land, because it is on the confines of the wild Indians, and a wilderness country.

On the 29th of February, 1844, the grant issued, subject to the approval of the Departmental Assembly and the usual conditions. The land granted is thus described: "The tract of land known by the name of Mariposas, to the extent of 10 square leagues, within the limits of the Sierra Nevada and the rivers known by the name of the Chanchilles, of the Merced, and the San Joaquin."

The approval of the Departmental Assembly was not obtained, nor does the grant appear to have been submitted to that body.

The genuineness of the grant is not disputed. Among the conditions of the grant are the following:—

3*d*. "He shall solicit from the proper magistrate the judicial possession of the same by virtue of this patent, by whom the boundaries shall be marked, on the limits of which he (the grantee) shall place the proper landmarks."

4*th*. "The tract of land granted is ten square leagues, as before mentioned. The magistrate who may give the possession shall cause the same to be surveyed according to the ordinance, the surplus remaining to the nation for the proper purposes."

No judicial possession was ever given by the magistrate, nor was the land surveyed during the existence of the former government.

It is objected by the District Attorney, that the claim cannot be confirmed, because the land was not segregated from the public domain before the change of sovereignties.

This objection applies with equal force to every grant with a description similar to this, of which no survey has been had, or judicial possession given, and would be equally tenable, although the absolute title had passed from the Mexican nation by the concurrence of all the authorities empowered to grant, and although every condition of occupation and cultivation had been literally complied with. It recognizes the right of the claimant to 10 leagues somewhere, but it is based on the grounds that "the courts of justice can only adjudge what has been granted, and declare that the lands granted by the former government are separated from the public domain." The U. S. *vs.* Miranda, 16 Peters, 160, "That the courts have no power to grant land, or decree an equivalent for land that cannot be identified," and that until its identity is established, so as to enable the courts to ascertain with reasonable certainty where the land lies, the land remains unsevered from the public domain, and the grant cannot be confirmed.

It is not denied that the identity of the grant may be shown either from the face of the grant, or by a legal survey made in conformity with the grant by some authorized officer of the former Government. The U. S. *vs.* Boyd, 5 How., 29; Anedondo's case, 13 Peters, 133; Buyck's case, 15 Peters, 224; Villalobos *vs.* The U. S., 10 How., 556. But in cases of grants with vague descriptions, where no survey has been had under the former Government, the Supreme Court has uniformly held as to claims in Florida and Louisiana, that no particular land was severed from the public domain by the grant, and that no survey could be ordered by the Courts of Justice. U. S. *vs.* Delespine, 15 Peters, 333; U. S. *vs.* Miranda, 156; Villalobos *vs.* The U. S., 10 Howard, 556.

If these decisions apply to this case, and the description is so vague that the land cannot be identified, the claim must be rejected.

By the 8th article of the Treaty with Spain for the cession of Florida, it is provided that "all grants of land made before the 24th of January, 1818, by his Catholic Majesty, or by his lawful authorities in the said Territory ceded by his Majesty to the U. S., shall be

ratified and confirmed to the persons in possession of such lands, to the same extent that the said grants would be valid if the Territory had remained under the dominion of his Catholic Majesty. But the owners of such lands in possession, who have been prevented from fulfilling the conditions of their grants, shall complete them within the times limited in the same, from the date of this treaty, in default of which the grants shall be null and void."

The words "in possession of such lands," were held by the Supreme Court in Anedondo's case not to imply occupation and residence only, but a legal seisin, and the court observes: "By grants of land we do not mean the mere grant itself, but the right, title, legal possession and estate, property and ownership legally resulting upon a grant to the owner." "When, therefore, there was neither a survey nor a sufficient particularity of description to enable one to be made, there could neither be a seisin in law, nor in fact, for an identity of premises is as essential to a seisin in law as it is necessarily implied in a seisin in fact. Miranda's Case, 16 Peters, 159. Previously to the passing of the Act of May 26th, 1824, conferring the jurisdiction on the Courts of the United States to adjudge incipient titles or imperfect titles, the political power could alone finally pass upon them, and Congress uniformly did so. But that body appointed, by various acts, Commissioners whose duty it was to investigate the claims, and report to Congress upon the propriety of confirming them.

By the Act of 1824, the courts were invested with the jurisdiction Congress had previously exercised, but to an extent considerably limited. By the 2d section, power and authority is given to the courts "to hear and determine all questions in said cause, relative to the title of the claimant; and, 2ndly, the extent, locality and boundaries of the claim; and in the 6th section, the Surveyor General on a decree being had, was required to survey the land decreed, for which a patent was to issue. The courts were thus required to find "the extent, boundaries and locality" of the claim, before it could make an effective decree, and if these could not be found, no decree could be made for any specific quantity of land, as they had no power to grant land nor decree an equivalent. U. S. *vs.* Santon, 5 Howard, 28; Forbes' Case, 15 Peters, 184; Buyck's Case, *ib.* 223.

From this review of the stipulations of the Florida treaty, and the powers conferred on the courts by the Act of 1824, it appears:—

1st. That the grants which it was agreed should be ratified and confirmed, were those only of lands of which the owners were in possession, that term being taken to signify not occupation and residence only, but legal seisin, to constitute which identity of premises was essential.

2ndly. That the courts were required to determine "the extent, boundaries and locality of the land," and that where this could not be done, they had no power to decree a confirmation; the rejection, therefore, of claims with an unlocated quantity of land did not proceed upon the ground that the claimant had not an equitable right

to have that quantity allotted to him somewhere, as in the case of a land warrant, but because it was impossible to settle the identity of the land and locate it by a judicial decree, that power belonging to the political department, and not having been, by the Act of 1824, conferred upon the courts.

But that mere floating claims were deemed by the Commissioners appointed to decide upon land claims in Louisiana and by Congress, proper for confirmation, is evident from their reports and the character of the claims confirmed by the Act of July 4th, 1836.

In Bissell *vs.* Penrose, 8 Howard, 317, the court decided that land held under a mere floating grant, and only located by a private survey which had been adopted by the Commissioners, was reserved by the 10th section of the Act of 1811, and being thus reserved, the location of a New Madrid certificate upon it was void; the claim to the land as designated in the private survey having been confirmed by Act of Congress.

On the argument, the private survey was alleged to be void and without effect to sever the land from the public domain, and in support of this view the cases decided under the Act of 1824, already noticed, were relied on. But the court draws the distinction between proceedings before the courts, and those before the Board of Commissioners, and observes that although under that Act to enable the claimant to recover, the land must appear to have been severed from the public domain, either by the grant itself or by some authorized survey, and that no private survey could have such an effect, yet that in proceedings before the Board of Commissioners the private survey was effectual as to the selection of the particular tract by the claimant, which by his general grant he is entitled to locate, so that he is thus enabled to present his claim in full for decision. "A general grant or order of survey is not simply a vagrant right to the given number of arpens in some part of the public domain, but it carries along with it the right, without which it would be valueless, to have it located with metes and bounds, that it may be occupied and enjoyed."

The confirmation of claims for land not severed from the public domain, undoubtedly belongs to the political department of the Government. That the courts had no power to effect the segregation under the Act of 1824 has already been shown, and it is also evident that the Land Commissioners in Missouri had power to order or adopt private surveys to ascertain the locality of grants, to be afterwards submitted to Congress for confirmation. In this way alone could the United States have carried into effect the treaty stipulations, securing the rights of property to the inhabitants of the ceded territory, and a large and important class of grants, constituting, it is said in 8th Howard, 334, one-half the whole number submitted to the Board, were saved and finally confirmed by Act of Congress.

The important question then arises, are the duties of the Board of

Commissioners for California and the U. S. Courts to be determined by the decisions under the Act of 1824; or are they, under the Act of March 3d, 1851, required to decide upon the validity of the claims, leaving the Surveyor General to locate in accordance with the grant, if its location can be ascertained?

If the Board is bound like the courts, under the Act of 1824, to ascertain "the extent, boundaries and locality of the claims," and if they are bound to reject every grant for land not severed from the public domain, either by an authorized survey or by description in the grant itself, many grants of which, through accident or the neglect or refusal of the proper officers, no juridical possession has been taken, are left wholly unprovided for and must necessarily be rejected; and yet that a mere floating grant like a land warrant is property, and should be protected under the treaty, would seem obvious.

It is true that in the Act of 1851, the power to order surveys is not specifically given to the California Commissioners, as to the Commissioners by the Act of 1806; but that, in the apprehension of the Government at least, the Board were empowered to require and adopt surveys made under the superintendence of the Surveyor General, is evident from the instructions of the Department of the Interior to the first Board, dated Sept. 11th, 1851.

It may be urged that to confide to the Surveyor General the whole duty of locating claims and ascertaining their boundaries, is to invest him with an unusual discretion, not ordinarily allowed to such officers. But if, as under the Act of 1824, this Board is to ascertain by its decree the extent, locality and boundaries of every grant, the power granted to the Surveyor General by the Act of 1851 would seem to be unnecessary. By that section, there is conferred on the Surveyor General the same powers as were given by the sixth section of the Act of March 3d, 1831, to the Register of the Land Office and Receiver of Louisiana. By that section, those officers were authorized in relation to all such confirmed claims as may conflict or in any way interfere with each other, and to decide between the parties, and were in such decision to be governed by such conditional lines or boundaries as have been or may be agreed upon by the parties interested, either verbally or in writing; and in case none were agreed upon, they were to decide consistently with the principles of justice. These powers are, as has been stated, expressly given to the Surveyor General of California; but if the Board are by decree to settle "the extent, locality and boundaries of every claim," and if the claim is to be rejected unless this can be ascertained from the face of the grant, or a survey under the former government, the powers given to the Surveyor General would seem to be superfluous.

It is believed that no mere floating grants or land warrants were made by the former Government. It is also notorious, and the fact was well known to the Government, as appears from instructions already referred to, that no actual surveys were ever made in this

country under the sovereignty of Mexico or Spain. The Government were not ignorant that the grants were for the most part loose and vague in their description of boundaries, and generally indicated the tract out of which the land granted was to be taken rather than the precise limits of the granted land, for the *sobrante* or excess was always reserved to the nation. The juridical possession which, if the cases under the law of 1824 apply, could alone effect a severance of the land from the public domain, was but a rude estimate and designation of the quantity granted, and the land of which possession was thus given, in almost every instance, exceeded in quantity, as is ascertained by an accurate survey, the quantity mentioned in the grant. The Government of the U. S. not unreasonably claim and exercise the right of correcting these under surveys, and restricting the claimant to the quantity specified in his grant; and this is done by the Surveyor General. This right they would exercise, though the right of the Mexican Government had been completely divested, and though every condition precedent and subsequent had been performed. Is not the Government bound by the correlative duty, in cases where a meritorious title exists to land, of which through accident or design no judicial possession has been taken to themselves, execute the survey and allot to the claimant his land in the same manner as the officer giving judicial possession ought to have done? If they refuse to locate the designation by that officer as a final and conclusive severance of the tract designated from the public domain, but re-survey the land for the purpose of appropriating the excess, ought they not, when that officer who has omitted his duty entirely, to ascertain the locality of the grant in the same way for the purpose of fixing the rights of the claimant? Upon the moral obligations of the Government to do so, under a treaty which secures all rights of property acquired under a previous Government, no doubt can, I think, be entertained.

But the question is, has it, by the act of 1851, provided means for fulfilling the obligation?

The Board is, as we have seen by the act, to decide upon the *validity* of the claim; they are not expressly authorized to decide upon its locality or boundaries. The character of the grants in California, and the absence of any surveys under the Mexican Government, must have been known to Congress, and it is at least as reasonable, as it is certainly more consistent with the spirit of justice that should animate a nation in carrying out its treaty stipulations, to suppose that the law meant that the locality and boundaries of the grant should be settled by the Surveyor General, as it is to suppose that it was the intention of Congress that all grants not definite in themselves, or made so by surveys, should be absolutely rejected. If the duty of fixing the boundaries and effecting the segregation be deemed to be devolved upon the surveyor, it is confided to the officer best able to discharge it; for no tribunal obliged to learn the natural features and monuments of a tract through the testimony of witnesses,

can have the same means of judging of the practicability of locating a tract as the surveyor, who on the spot compares its calls with the features of the country before him. If the Surveyor General is unable to locate, the certificate is withheld and no patent can issue; but if he is enabled to do so, it may at least be doubted whether the act does not contemplate, as justice and national good faith surely require, that a grant thus found to be susceptible of location should be secured to the claimant. Upon a question so important as this, which was not discussed at the bar, nor, so far as I am aware, been mooted before either Board of Commissioners, I do not desire now to express an opinion, for I do not conceive its determination necessary to the decision of this point in the case; I have thought it fit, however, to suggest the views given above, in the hope that the Supreme Court may be induced to consider and finally settle the question.

But upon the assumption that the cases decided under the act of 1824, apply to the case now under consideration, the inquiry presents itself whether, under the rule of decision laid down by the Supreme Court, this claim must be rejected for vagueness of boundaries. The land is described in the grant as the tract known by the name of the Mariposas, to the extent of ten square leagues, situated within the limits of the Sierra Nevada and the Chanchilles, the Merced and San Joaquin Rivers.

The district of country embraced by these exterior boundaries is shown to contain nearly one hundred square leagues; if the grant contained no other means of designating in what part of this extensive district the particular ten leagues granted were to be taken, I should strongly incline to the opinion that under the decision of the Supreme Court it would be void for uncertainty; but the tract granted is called in the grant "Las Mariposas." If, then, within the general exterior limits a particular tract by the name of Mariposas can be found and identified, that tract must be taken to be the subject of the grant.

From the testimony taken it appears that within the general limits mentioned in the grant, a smaller tract, situated on the Mariposas Creek, is well known and seems to have been understood to have been the tract granted to Alvarado.

This tract, forming the valley of the Mariposas, is that delineated on the map of Pico, which, though merely a private map and made from memory, yet when accompanied by a survey by the Surveyor General, made in conformity with it, and taken in connection with the testimony, shows that there is a tract of land known as Las Mariposas, situated within the general limits of the grant and capable of identification.

The valley seems to be easily distinguishable, being narrow and shut in by high and barren hills; this General Vallejo swears to be the tract generally known to have been granted to Alvarado. In O'Hara's Case, 15 Peters, 283, the Court say: "The place where the survey is to be made must first be made certain, if not as to fixed

boundaries, at least by evidence of general or popular apprehension, as to show what was the grantor's notion of the limits of country within which he intended to grant."

In this case not only are the general limits of country specifically shown by the exterior boundaries mentioned in the grant, but the particular part is designated. In the case of the U. S. *vs.* Clarke, 8 Peters, 467, the grant was for "five miles square of land, situated on the west side of St. John's River, above Black Creek, at a place called White Spring," and this the Supreme Court held valid as to the whole land within its bounds, as well that which had not been surveyed as the 8000 acres which had; I do not perceive that the description in that grant was more specific than that under consideration.

In Boisdore's Case, 11 Howard, 86, the claim was rejected for vagueness of description, but in that case the quantity of land was not stated, and the uncertainty of the boundaries left it liable to be enlarged or diminished at the discretion of the surveyor.

In the case at bar, the quantity of land granted is fixed. The limits of the district within which it is to be located are designated by unmistakable natural boundaries, and the particular land granted is specified by name. It does not seem to me that in directing a survey to be made on the valley of the Mariposas, or in adopting that already made, the court would be exercising the granting power, but rather it would be determining the extent and locality of land already severed from the public domain by the grant itself.

The other objection urged by the District Attorney to the confirmation of this claim is, that the conditions have not been complied with, and that the title of the claimant being inchoate, or imperfect, not having been approved by the Departmental Assembly, no equitable obligation rests upon the United States to confirm it.

In the case of *Cruz Cervantes*, it was considered by this court that the only solid equity which the claimants under an unconformed grant could urge upon the government, as a reason why they should confirm it, was the fulfilment of the conditions, or the performance of those acts which under the Mexican system were the only motives and consideration of the grant, and that where as in that case, the conditions had been wholly unperformed, and the grant apparently abandoned for a great number of years, with only an effort or an excuse, that the claimant could not appeal to the justice of the government to confirm his claim, however much his application might commend itself to their generosity.

In the case of *Reading*, the efforts of the claimant to perform, and his excuses for his failure to perform completely, were deemed sufficient to entitle him to a confirmation, within the rule laid down in *Libbald's* case, to which it seemed most analogous.

The facts in the case at bar are as follows:—

The grant was issued to Alvarado on the 29th February, 1844, on condition, among other things, "that he should build a house within a year, and it should be inhabited." Immediately on receiving his

grant, Alvarado (as appears from his own testimony) applied to the Governor for a military force to enable him to take possession, reminding him of the fact, already known to the Governor, that the country was infested with hostile Indians, and could not be occupied except by the aid of a military force. The Governor, as Alvarado testified, offered to erase the conditions from the grant, but this the petitioner declined, alleging his intention to occupy and cultivate his land. The Governor then agreed to furnish the necessary force, and a military post was soon after established on the San Joaquin, near the granted land. Owing to the depredations of the Indians, this post was soon after abandoned. Shortly afterwards there was a political revolution, and Genl. Micheltorrena's affairs becoming embarrassed, no more troops were sent. This occurred during the year 1844. Alvarado further testifies that in 1845, while commander at Monterey, he collected the cavalry and took them to his rancho near Monterey, and was organizing them for the purpose of taking possession, by their aid, of the Mariposas. While thus engaged, he received orders from Genl. Castro to return to Monterey, there being rumors of war. From that time Alvarado made no further attempts to take possession, his military duties occupying all his attention during the war which ensued. In the beginning of 1846 the war between the United States and Mexico broke out, and on the 7th of July of that year, the American flag was hoisted and the Mexican authorities deposed. On the 14th of February, 1847, Alvarado conveyed to Fremont, the present claimant. On receiving his conveyance, Fremont seems to have taken some measures to settle and cultivate his land; but being ordered home, under arrest, he employed an agent to go upon the land, cultivate and inhabit it. That agent was, by Fremont's direction, supplied with money, agricultural implements, &c., and provisions; but on going to the land in the Spring of 1847, found the Indians so hostile that he was compelled to abandon the enterprise. The same agent twice visited the land during the following summer, but found the Indians so dangerous that he was unable to make any settlement. The land was not finally settled until after Fremont's return from the United States in 1849; but since that time the claimant has erected on it numerous valuable improvements, consisting of machine shops, dwelling houses, &c., and is now in possession of the tract.

The whole testimony leaves no room to doubt but that the settlement was effected at as early a time as the hostility of the Indians and the circumstances of the country rendered it practicable to do so, without a large military force.

It is urged by the District Attorney that hostility of the Indians affords no excuse for non-fulfilment of the conditions, and in support of this position, the case of De Villemont *vs.* The U. S., 13 Howard, 266, is relied on.

The case of De Villemont bears the strongest analogy to the one under consideration. The concession was granted in consideration of

the petitioner's intention to establish a stock-farm and plantation. It was made under the express condition that he should make the regular road and clearing within the peremptory term of one year, the concession to be null if at the precise expiration of three years the land should not be established. From the date of the grant until the delivery of Louisiana to the United States, he had completely failed to comply with the conditions.

In excuse he showed that during all the time, he was the Civil and Military Commandant of the post of Arkansas; that his presence there was constantly required by the threatening aspect of the Indian tribes by whom he was surrounded, and his correspondence with the Governor showed that even a temporary absence from his post would not have been tolerated. He further showed that the hostility of the Indians prevented a settlement by his agents.

It was also established by proof that the common usage of the Spanish authorities was to insert the conditions as to making a settlement and a road within a given day mechanically and as a mere matter of form; that no land was ever forfeited under the former Government for non-compliance with these conditions, and the testimony upon these points was confirmed by that of a Judge of the Supreme Court of Louisiana, of great experience and reputation.

It further appeared that the claimant had, as in this case, attempted to make a settlement by an agent, but the hostility of the Indians prevented it.

It is apparent that in almost every particular that case resembled the one now under consideration.

The court, in commenting on the duty of performing the conditions, say, "That it was undoubtedly necessary that an establishment should have been made within three years, such being the requirements of the grant, in concurrence with the regulations. The evidence of usage in that case was at least as strong as that relied on in this, and the attempts to settle seem to have been made in that case as in this, and to have been abortive for the same reason. The court was also, in that case, required to be governed in its decisions by the laws, usages and customs of the Government under which the claim originated. But the claim was rejected notwithstanding the excuses offered, and the evidence of the uniform usage of the Spanish authorities.

Boisdore's case is, if possible, stronger, for in that case there was a partial performance of the conditions; but the court held that, inasmuch as the claimant had stipulated to remove his family to the land, and take there all his force of negroes, the occupation by a single mulatto, by whom some cattle were kept, and a few acres cleared, were wholly insufficient.

With respect to the excuse that the state of the country and Indian hostilities prevented the settlement, the Supreme Court held as early as Kingsby's case, 12 Peters, 483, that the excuse could not be received if the same obstacles existed at the time of the conces-

sion; and the decision in De Villemont's case, but re-affirms that doctrine.

The case of Sibbald, 13 Peters, 313, is relied on by the counsel for the claimants as furnishing an instance analogous to that in this case of a good performance *cy pres.*

But the difference between the cases is obvious. The grant in that case was on condition that a mill should be established, and declared, "that until the petitioner should establish his mill this grant should be of no effect." It was dated in 1846, but no specific time was limited by the decree within which the mill was to be erected and put into operation.

It appeared that a mill was built in 1819, and carried away by a freshet, but that $5000 had been expended in the construction; that in 1827, another mill was built and in operation, which was destroyed by fire, in 1828; that in October, 1828, another was built, which went into operation in June, 1829, and had ever since so continued. The court held that the petitioner had began the erection of the first mill in time to save a forfeiture, and that the other acts amounted to a compliance with the condition according to the rules of equity.

But in the case at bar, the time for making a settlement is limited to one year. So far as appears, Alvarado never even saw the tract he assumed to convey to Fremont, nor was any settlement effected by the latter until a year after the ratification of the Treaty. It cannot be urged in this, as in other cases, that the grant was not made complete by the assent of the Assembly, owing to accident or the neglect of the Governor, for Alvarado himself says it could not be submitted to them without the diseno or plan, which, on account of the hostilities of the Indians, he was unable to furnish, and yet the danger from that source existed at the time of his application, for he assigns it to the Governor as a reason why the diseno did not accompany the petition.

It is urged that the political disturbances of the country contributed to prevent the settlement; but I think it clear, from the evidence, that the principal, if not the only reason why it was not effected by Alvarado or Fremont until after the treaty, was the danger from the savages, and that this danger existed to substantially the same degree before and after the grant.

Upon the whole, after a most careful consideration of this case, and with every desire to give the claimant the full benefit of every favorable consideration to which he is entitled, I have been unable to resist the conclusion that the cases of Glen, of De Villemont, and of Boisdore, lay down for me rules of decision applicable to this case, and from which I am not at liberty to depart.

At a stated term of the District Court of the United States of America for the Northern District of California, held at the Court House in the City of San Francisco on Saturday, the 7th day of

December, in the year of our Lord one thousand eight hundred and fifty-three—

Present—The Honorable Ogden Hoffman, Jr., District Judge.

THE UNITED STATES, Appellants,
vs.
JOHN C. FREMONT, Appellee.

This cause coming on to be heard at the above stated term, on appeal from the final decision of the Commissioners to ascertain and settle private land claims in the State of California, under the Act of Congress approved March 3d, 1851, upon the transcript of the proceedings and decision, and the papers and evidence on which said decision was founded, and also upon the testimony and depositions taken before this court, and the arguments of counsel for the United States and for the claimant being heard, it is ordered, adjudged and decreed that the decision of the said Commissioners be in all things reversed and annulled, and that the said claim be held invalid and rejected.

(Signed) OGDEN HOFFMAN, JR.,
U. S. District Judge.

(Endorsed) "Final judgment and decree." "Filed January 7th, 1854."

UNITED STATES DISTRICT COURT,
In Common Law.

THE UNITED STATES
vs.
JOHN C. FREMONT. } Land Claim No. 1.

The claimant intends to appeal from the decision of U. S. District Court in this case to the Supreme Court of the United States.

To JOHN A. MONROE, *Clerk, &c.*
V. E. HOWARD, *Counsel for John C. Fremont.*

(Endorsed) "Notice of Appeal." "Filed January 10th, 1854."

U. S. DISTRICT COURT.

THE UNITED STATES
vs.
JOHN C. FREMONT. } Land Claim No. 1.

And this day comes the claimant by V. E. Howard, his attorney, and moves the court that an appeal be granted in the above entitled cause from the judgment of this Honorable Court to the Supreme Court of the United States.

(Signed) V. E. HOWARD,
Counsel for John C. Fremont.

(Endorsed) "Motion to Appeal." "Filed January 10th, 1854."

At a stated term of the District Court of the United States of America for the Northern District of California, held at the Court House, in the City of San Francisco, on Saturday, the 14th day of January, in the year of our Lord one thousand eight hundred and fifty-four—

Present—The Honorable Ogden Hoffman, Jr., District Judge.

THE UNITED STATES, Appellants,
vs.
JOHN C. FREMONT, Appellee.

The motion of appeal made and filed in the above cause having been heard by the court, it is ordered that an appeal in the above cause be granted on filing security in the sum of two hundred and fifty dollars, to be approved by the judge.

OGDEN HOFFMAN, JR.,
U. S. District Judge.

(Endorsed) "Filed January 14th, 1854."

DISTRICT COURT OF THE UNITED STATES OF AMERICA,
For the Northern District of California.

Sitting at San Francisco, in the County of San Francisco.

JOHN C. FREMONT, Claimant and Appellant,
vs.
THE UNITED STATES, Appellee.

Know all men by these presents, that we, Joseph C. Palmer and George W. Wright, of the State of California, are held and firmly bound to the above named United States in the sum of two hundred and fifty dollars, to be paid to the said appellee, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, by these presents: sealed with our seals, and dated the sixteenth day of December, in the year of our Lord one thousand eight hundred and fifty-four. Whereas, the above named appellant has prosecuted an appeal to the Supreme Court of the United States, at the City of Washington, in the District of Columbia, to reverse the decree rendered in the above suit by the District Court of the United States for the Northern District of the State of California: now, therefore, the condition of this obligation is such, that if the above named appellant should prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void, otherwise to remain in full force and virtue.

Witness our hands and seals, the day, month, and year above written.

JOSEPH C. PALMER. [L. S.]
G. W. WRIGHT. [L. S.]

In presence of

HENRY B. JANES.

Approved the 16th of January, 1854.

OGDEN HOFFMAN, Jr.,
Dist. Judge.

(Endorsed) "Filed January 16th, 1854."

NORTHERN DISTRICT OF CALIFORNIA.

I, John A. Monroe, Clerk of the United States District Court for the said District, do hereby certify that the annexed pages, from one to one hundred and eighty-one inclusive, contain a full, true, and correct Transcript of the Record on file from the Board of Land Commissioners, together with the pleadings, depositions, and orders, decrees, opinion and bond filed in this office, in the case entitled

THE UNITED STATES, Appell't,
vs.
JOHN C. FREMONT, Appellee.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, the 16th day of January, in the year of our Lord one thousand eight hundred and fifty-four, and of the Independence of the United States of America the seventy-eighth.

JNO. A. MONROE,
Clerk U. S. Dist. Court. N. D. C.